



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-04-74-A
Date: 28 August 2013
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 28 August 2013

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIĆ
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC

**PUBLIC REDACTED VERSION OF THE 25 JULY 2013
DECISION ON SLOBODAN PRALJAK'S MOTION FOR
REVIEW OF THE REGISTRAR'S DECISION ON MEANS**

Counsel for the Accused:

Ms. Nika Pinter
Ms. Natacha Fauveau Ivanović

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 confidential and *ex parte* "*Requête de Slobodan Praljak aux fins d'examen de la decision du greffier avec la demande d'autorisation de dépasser le nombre de mots fixe*", filed by Slobodan Praljak ("Praljak") on 22 January 2013 with confidential and *ex parte* annexes ("Motion for Review"),¹ which requests review of a decision on means issued publicly with a confidential and *ex parte* Appendix I and public Appendix II by the Registrar of the Tribunal ("Registrar") on 22 August 2012 ("Decision on Means"). The Registrar responded on 26 April 2013,² and Praljak replied on 6 May 2013.³ On 26 May 2013, the Registrar filed a submission regarding Praljak's Reply.⁴

I. BACKGROUND

2. On 13 September 2004, Praljak submitted a declaration of means to the Registrar pursuant to Article 7 of the Directive on the Assignment of Defence Counsel ("Directive"),⁵ requesting the assignment of Tribunal-paid counsel on the basis that he lacked the means to remunerate counsel ("2004 Request for Legal Aid").⁶ On 17 June 2005, the Deputy Registrar denied the request finding that Praljak had failed to establish that he was unable to remunerate counsel.⁷ On 21 September 2005, Trial Chamber I affirmed the Registrar's decision.⁸ On 22 December 2005, the Registrar denied Praljak's request for a reassessment of the 2004 Request for Legal Aid, finding that Praljak had failed to provide the information necessary to complete a determination of indigence.⁹

3. On 12 January 2006, Praljak requested Trial Chamber II ("Trial Chamber") to assign him counsel in the interests of justice.¹⁰ The Trial Chamber granted Praljak's request on 15 February

¹ An English translation was filed on 1 February 2013.

² Registrar's Response to Slobodan Praljak's Motion for Review of the Registrar's Decision on Means, 26 April 2013 (confidential and *ex parte*) ("Response").

³ *Demande d'autorisation de réplique et la réplique de Slobodan Praljak à la Response du greffier déposé le 26 Avril 2013*, 6 May 2013 (confidential and *ex parte*) ("Reply"). An English translation was filed on 15 May 2013.

⁴ Registrar's Submission Pursuant to Rule 33(B) Regarding Slobodan Praljak's Request for Leave to Reply and Reply to the Registrar's Response filed on 26 April 2013, 29 May 2013 (confidential and *ex parte*) ("Reply to Reply").

⁵ IT/73/Rev. 11, 11 July 2006.

⁶ See Decision on Means, p. 1. See also Motion for Review, para. 14.

⁷ See Decision on Means, p. 2.

⁸ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision on Slobodan Praljak's Request for Review of the Deputy Registrar's Decision dated 17 June 2005 Regarding the Accused's Request for Assignment of Counsel, 21 September 2005 (confidential and *ex parte*), para. 22 ("Decision on Request for Review"). A public redacted version was filed on 5 October 2005.

⁹ See Decision on Means, p. 2.

¹⁰ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Request by Slobodan Praljak for the Review of an Opinion of the Registrar of the Tribunal and Request for the Assignment of Defence Counsel, 12 January 2006, para. 24.

2006 and directed the Registrar to assign counsel to Praljak in the interests of justice.¹¹ The Trial Chamber noted that Praljak would be ordered to provide further information to the Registrar to enable him to conduct an adequate assessment of the financial means available for his own defence costs.¹² The Registrar assigned Tribunal-paid counsel to Praljak on 6 March 2006, noting that the assignment was made without prejudice to Rule 45(E) of the Rules of Procedure and Evidence of the Tribunal ("Rules") and Article 18 of the Directive.¹³ On 22 August 2012, the Registrar determined that Praljak was able to fully remunerate counsel and did not qualify for the assignment of Tribunal-paid counsel.¹⁴ Accordingly, the Registrar withdrew the assignment of Praljak's counsel effective on the date of the Trial Chamber's rendering of its judgement and further decided that Praljak shall reimburse the Tribunal for the cost of his defence in the amount of €3,293,347.49.¹⁵

4. On 18 January 2013, Praljak filed a notice in which he submitted to the Trial Chamber his "personal remarks" and "relevant documents" regarding the Decision on Means ("Notice").¹⁶ The Registrar made an initial submission regarding the Notice on 30 January 2013, claiming, *inter alia*, that the additional materials that Praljak submitted with the Notice ("Additional Materials") had not been transmitted to the Registrar's office.¹⁷ Praljak filed a response on 1 February 2013.¹⁸ On 29 January 2013, Trial Chamber III "relinquish[ed]" the Motion for Review and referred it to me for adjudication.¹⁹ On 12 March 2013, I ordered, *inter alia*, that the Additional Materials be provided to the Registrar.²⁰ The Registrar filed a second submission relating to the Additional Materials on 3 April 2013, asserting, *inter alia*, that the materials are irrelevant to the Motion for Review.²¹ Praljak responded to these claims in his Reply, submitting that it is in the interests of justice that I have the Additional Materials at my disposal.²²

¹¹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision on Assignment of Defence Counsel (Confidential Annex), 15 February 2006 ("Decision on Assignment of Counsel"), paras 12-13, p. 7.

¹² Decision on Assignment of Counsel, para. 13.

¹³ *Prosecutor v. Slobodan Praljak*, Case No. IT-04-74-PT, Decision, 6 March 2006 ("Decision Assigning Counsel"), p. 2. See also Decision on Means, p. 2.

¹⁴ See Decision on Means, p. 6.

¹⁵ Decision on Means, pp. 6-7. [REDACTED]. Response, para. 197, n. 252.

¹⁶ Notification, 18 January 2013 (confidential and *ex parte*) ("Notice"), p. 2. An English translation was filed on 22 January 2013.

¹⁷ Registrar's Submission Regarding the Defence Notification and *Requête de Slobodan Praljak aux fins d'examen de la décision de greffier avec la demande d'autorisation de dépasser le nombre de mots fixe*, 30 January 2013 (confidential and *ex parte*), paras 3-4.

¹⁸ *Response de Slobodan Praljak aux arguments du greffier déposés le 30 Janvier 2013*, 1 February 2013 (confidential and *ex parte* with confidential and *ex parte* annex). An English translation was filed on 6 February 2013.

¹⁹ Decision on Slobodan Praljak's Motion for Review of the Registrar's Decision of 22 August 2012, 29 January 2013, p. 4.

²⁰ Interim Order on Registrar's Submission Regarding the Defence Notification with Confidential and *Ex Parte* Annex, 12 March 2013 (confidential and *ex parte*), p. 3.

²¹ Registrar's Submission Regarding the Defence Notice and *Requête de Slobodan Praljak aux fins d'examen de la décision de greffier avec la demande d'autorisation de dépasser le nombre de mots fixe*, 3 April 2013 (confidential and *ex parte*) ("Registrar's Submission on Additional Materials"), para. 12.

²² Reply, paras 6-12.

5. On 29 May 2013, the Trial Chamber rendered the judgement in the *Prlić et al.* case,²³ thus triggering the withdrawal of counsel pursuant to the Decision on Means.²⁴ On 29 May 2013, I issued an interim order staying the withdrawal, pending resolution of the Motion for Review.²⁵

II. STANDARD OF REVIEW

6. The following standard has been set for the review of administrative decisions made by the Registrar:

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgment 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.²⁶

Accordingly, an administrative decision may be quashed if the Registrar:

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test).²⁷

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".²⁸ 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".²⁹ If the President is satisfied as to both of these matters, it may quash the Registrar's decision.³⁰ However, in the case of an administrative decision relating to legal aid, "it is clear, from the implicit restriction that only the

²³ *Jugement*, 29 May 2013.

²⁴ *See supra*, para. 3.

²⁵ Order Regarding Assignment of Defence Counsel to Slobodan Praljak, 29 May 2013 (confidential and *ex parte*) ("Interim Order"), p. 1.

²⁶ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 ("Žigić Decision"), para. 13. *See also* *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 ("Karadžić Decision"), para. 6.

²⁷ *Karadžić Decision*, para. 6 (internal citation omitted). *See also* Žigić Decision, para. 13.

²⁸ Žigić Decision, para. 13. *See also* *Karadžić Decision*, para. 7.

²⁹ *Karadžić Decision*, para. 7 (internal citation omitted and alteration in original). *See also* Žigić Decision, para. 14.

³⁰ Žigić Decision, para. 14.

Registrar may determine the *extent* to which the accused has the means to [...] remunerate counsel, that the power of the President to substitute its own decision for that of the Registrar is limited”.³¹

III. APPLICABLE LAW

8. Rule 45(A) of the Rules provides that “[w]henever the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel”.

9. Rule 45(E) of the Rules provides that “[w]here a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the Chamber may, on application by the Registrar, make an order of contribution to recover the cost of providing counsel”.

10. Article 7 of the Directive provides that a suspect or accused who requests the assignment of Tribunal-paid counsel must submit a declaration of his means and update this declaration whenever a relevant change occurs. Pursuant to Article 8(A) of the Directive, a legal aid applicant “must produce evidence establishing that he is unable to remunerate counsel”. Article 8(B) of the Directive provides that once the Registrar has opened an inquiry into the applicant’s means, the applicant “shall provide or facilitate the production of information required to establish his ability to remunerate counsel”. Article 8(C) further provides that

[w]here a suspect or accused fails to comply with his obligations under Articles 8(A) and (B) to the extent that the Registrar is unable to properly assess the suspect or accused’s ability to remunerate counsel, the Registrar may deny the request for the assignment of counsel after warning the suspect or accused and giving him an opportunity to respond.

11. Article 9(A) provides that the Registrar, in order to establish an applicant’s ability to remunerate counsel, “may inquire into his means, request the gathering of any information, hear the [applicant], consider any representation, or request the production of any document likely to verify the request”. Article 9(B) permits the Registrar to “request any relevant information at any time, including after counsel has been assigned, from any person who appears to be able to supply such information”.

12. Pursuant to Article 11(C) of the Directive, if an applicant does not comply with the Directive’s requirements within a reasonable time, the Registrar may still assign counsel in the interests of justice and without prejudice to Article 19 of the Directive.

13. Article 19(A) of the Directive establishes that the Registrar may withdraw the assignment of counsel “if information is obtained which establishes that the suspect or accused has sufficient

³¹ Žigić Decision, para. 14.

means to remunerate counsel” and that the Registrar may, in such cases, “recover the cost of providing counsel in accordance with Rule 45(E) of the Rules”.

14. Article 19(B) of the Directive provides that where counsel has been assigned, the Registrar may modify a decision on the suspect’s or accused’s ability to remunerate counsel if it is established that the suspect’s or accused’s means: “(i) have changed since the Registrar issued his decision on the extent to which the suspect or accused is able to remunerate counsel; or (ii) were not fully disclosed, or were otherwise not known to the Registrar, as of the date he issued his decision”.

15. Sections 5 and 6 of the Registry Policy for Determining the Extent to which a Suspect is Able to Remunerate Counsel (“Registry Policy”) establish which assets the Registrar shall include or exclude in calculating an applicant’s disposable means. Sections 7 and 8 of the Registry Policy govern the Registrar’s relevant calculation of an applicant’s income. Section 9 of the Registry Policy establishes the formula to be used in assessing an applicant’s principal family home, and Section 10 of the Registry Policy provides the formula for calculating an applicant’s estimated living expenses. Section 11 of the Registry Policy details the formula for calculating an applicant’s ability to remunerate counsel.

IV. GENERAL SUBMISSIONS

16. As an initial matter, Praljak requests an extension of the word limit for the Motion for Review.³² Praljak notes that the Practice Direction on the Length of Briefs and Motions (“Practice Direction”)³³ does not provide an indication regarding the length of an appeal against a decision by the Registrar, and he is not persuaded that the Practice Direction indeed applies in the instant case.³⁴ Should the Practice apply, however, Praljak requests that he be allowed pursuant to Article 7 of the Practice Direction to exceed the word limits prescribed therein on the basis of: (i) the length of the Decision on Means and Appendix I, which exceeds 60 pages; (ii) the complexity of the question and the number of assets considered in the Decision on Means; and (iii) the impact that the final decision could have on his rights and on a fair trial.³⁵ Moreover, Praljak requests that the Trial Chamber obtain his entire file from the Registrar, to allow the Trial Chamber to properly assess his case.³⁶

³² Motion for Review, paras 12, 122. In addition to the general summary of the parties’ submissions contained here, a more detailed summary of the parties’ submissions is set forth in Section V.C.

³³ IT/184 Rev. 2, 16 September 2005.

³⁴ Motion for Review, para. 12.

³⁵ Motion for Review, para. 12.

³⁶ Motion for Review, para. 123.

17. With respect to substantive issues, Praljak submits that the Decision on Means contravenes the standards for assigning and withdrawing counsel, violates his rights, goes against the interests of justice and legal certainty,³⁷ and is based on an erroneous determination of his assets.³⁸ First, Praljak submits that he was justified in believing that the question of eligibility for legal aid was resolved by the Registrar's Decision Assigning Counsel, noting in particular that the Registrar issued two subsequent decisions, which gave no indication to the contrary.³⁹ Praljak asserts that any subsequent decision to withdraw counsel cannot be made other than pursuant to Article 19(B) of the Directive.⁴⁰ According to Praljak, the Registrar thus was required to demonstrate that his financial means had changed since the Decision Assigning Counsel was issued or that Praljak did not fully disclose information before the Registrar came to this decision.⁴¹ Praljak further asserts that, pursuant to Rule 45(E) of the Rules, only the Chamber may issue an order to recover the costs of assigned counsel, not the Registrar.⁴²

18. Second, Praljak raises a number of substantive arguments with respect to the procedure by which the Registrar arrived at the Decision on Means.⁴³ Specifically, Praljak asserts that the Decision on Means does not contain a specification of the costs of his defence, thus he "has no idea" what the €3,293,347.49 that he is expected to reimburse comprises.⁴⁴ Moreover, Praljak claims that the Registrar subjected him to "special treatment", requiring him "to provide information that he did not have and that he could not have".⁴⁵ Praljak concedes that he is under an obligation, pursuant to Rule 8(A) of the Directive, to provide evidence establishing that he is unable to remunerate counsel.⁴⁶ However, Praljak submits that the Registrar must have "solid, relevant and credible evidence showing that the balance of probabilities is in the Registrar's favour" when challenging the veracity of the information provided by Praljak.⁴⁷ In this regard, Praljak relies on jurisprudence stating that "the more serious the consequences flowing from an Article 11 decision,

³⁷ Motion for Review, paras 5, 24-41, 112-121. *See also* Reply, paras 13-31, 80-83.

³⁸ Motion for Review, paras 5, 42-111. *See also* Reply, paras 32-79, 84-85.

³⁹ Motion for Review, paras 29-30 (referring to the Registrar's decisions assigning Ms. Nika Pinter as counsel on 11 April 2011 and Ms. Natacha Fauveau Ivanović as co-counsel on 26 May 2011 (collectively, "Reassignment Decisions")). *See also* Reply, paras 17-20.

⁴⁰ Motion for Review, paras 28, 30. *See also* Motion for Review, paras 25-27; Reply, para. 14.

⁴¹ Motion for Review, para. 25. *See also* Motion for Review, para. 32; Reply, para. 13.

⁴² Motion for Review, paras 33-34. *See also* Reply, paras 22-23.

⁴³ Motion for Review, paras 35-41.

⁴⁴ Motion for Review, para. 35.

⁴⁵ Motion for Review, para. 37.

⁴⁶ Motion for Review, para. 38.

⁴⁷ Motion for Review, para. 38. *See also* Motion for Review, paras 39-41.

the more it will take for the Registrar to be satisfied about the probable truth of what is asserted in the Article 10 inquiry”.⁴⁸

19. Third, Praljak asserts that the Registrar made an erroneous determination of his assets.⁴⁹ According to Praljak, Article 19(B) of the Directive requires the Registrar to take into account only those assets that were not already disclosed and to provide evidence that he actually owns these assets and failed to disclose them.⁵⁰ In his case, Praljak claims that the Registrar took into account assets that do not belong to him,⁵¹[REDACTED],⁵² [REDACTED],⁵³ [REDACTED],⁵⁴ [REDACTED].⁵⁵ Moreover, Praljak asserts the Registrar erroneously took into account assets that were already disclosed in the 2004 Request for Legal Aid, [REDACTED]⁵⁶ [REDACTED].⁵⁷ Praljak also submits that the Registrar incorrectly evaluated particular assets.⁵⁸ Finally, Praljak claims that the Registrar failed to ensure that he “is able to use the assets in a way that could ensure the necessary funds for his defence” and that the Registrar “continually refused, for no valid reason and in an arbitrary fashion, to take into account the information and the explanations” that he provided.⁵⁹

20. Fourth, Praljak submits that the Decision on Means, which was issued eight years after the start of the procedures, goes against the interests of justice and legal certainty and violates the rights of the Accused and the right to a fair trial.⁶⁰ Praljak asserts that the Decision on Means presents him with a “fait accompli”, asserting that had he known that he would have to reimburse the Tribunal for the costs of his defence, [REDACTED].⁶¹ Praljak also submits that the Registrar has “never investigated the means of the Accused” in cases like his, where counsel was assigned in the interests of justice.⁶² In addition, Praljak contends that he would be denied the “right to defence” if

⁴⁸ Motion for Review, para. 38, citing *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-PT, Decision on the Defence’s Motion for an Order Setting Aside the Registrar’s Decision Declaring Momčilo Krajišnik Partially Indigent for Legal Aid Purposes, 20 January 2004 (“*Krajišnik Decision*”), para. 28.

⁴⁹ Motion for Review, paras 5, 42-111. See also Reply, paras 32-79, 84-85.

⁵⁰ Motion for Review, para. 43. See also Reply, paras 15-16.

⁵¹ Motion for Review, para. 45, n. 37.

⁵² See Motion for Review, paras 49-63. See also Reply, paras 33-41.

⁵³ See Motion for Review, paras 88-89. See also Reply, paras 66-67.

⁵⁴ See Motion for Review, paras 91-93, 96. See also Reply, para. 73.

⁵⁵ See Motion for Review, paras 98-102, 105. See also Reply, paras 76, 79.

⁵⁶ Motion for Review, paras 76, 82. See also Reply, para. 52.

⁵⁷ Motion for Review, paras 83, 87. See also Reply, para. 59.

⁵⁸ Motion for Review, paras 77-82, 86-87, 90, 94-95, 103-105. See also Reply, paras 53-58, 60-63, 68, 77-78.

⁵⁹ Motion for Review, para. 45. See also Motion for Review, paras 64-75, 89, 105; Reply, paras 25-27, 42-51, 71-73, 78, 84-85.

⁶⁰ Motion for Review, paras 5, 112-121. See also Reply, paras 80-83.

⁶¹ Motion for Review, para. 113. See also Motion for Review, para. 112; Reply, paras 28-31.

⁶² Motion for Review, paras 115-116, citing *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision, 19 November 2009 (“*Karadžić Decision on Assignment of Counsel*”); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision, 5 September 2003 (“*Šešelj Decision on Assignment of Counsel*”). See also Reply, para. 31.

he were not assigned counsel at the appeal stage of his case.⁶³ Finally, Praljak asserts that Registrar “cannot remedy his own omissions”, which were caused by “the excessive length” of the Registrar’s decision-making process and by the “superficial investigations” that the Registrar conducted.⁶⁴

21. In view of these alleged errors, Praljak requests that the Decision on Means be reversed and that he receive legal aid for the duration of his trial, including any appeals.⁶⁵ In the alternative, Praljak requests that the Registrar be directed to reconsider the Decision on Means in line with the Statute, the Rules, and the Directive.⁶⁶

22. The Registrar opposes the Motion for Review and submits, as a general matter, that he “followed the correct procedure and made reasonable findings in conformance with applicable law and the tenets of fairness and natural justice, applying the correct standard of proof and considering only relevant material”.⁶⁷ More specifically, the Registrar asserts that the Decision on Means complies with the relevant legal provisions.⁶⁸ In this regard, the Registrar contends that the Trial Chamber, in the Decision on Assignment of Counsel, “pre-empt[ed]” the Registrar in making a final determination on means prior to the assignment of counsel⁶⁹ and that, accordingly, the Registrar’s Decision on Means is the “first substantive decision on the actual means of [Praljak]”.⁷⁰ The Registrar further submits that “there can be no doubt” that the inquiry into Praljak’s financial means was ongoing until the issuance of the Decision on Means.⁷¹ The Registrar thus asserts that it was not necessary to demonstrate a change in Praljak’s means and that withdrawing Praljak’s counsel was justified given that Praljak was found to have been ineligible for legal aid.⁷² The Registrar also points out that Praljak was assigned Tribunal-paid counsel under unique circumstances, pursuant to the Trial Chamber’s order, and that “[t]o the extent any exception was applied [...] it was to [Praljak’s] benefit”.⁷³

23. The Registrar further submits that it is “Registry practice” to directly request reimbursement from a legal aid recipient prior to seeking an order from the Trial Chamber, explaining that “[t]his gives a suspect or accused the opportunity to provide restitution without unnecessary motion

⁶³ See Motion for Review, para. 118. See also Motion for Review, paras 117, 119; Reply, paras 80-83.

⁶⁴ Motion for Review, para. 119.

⁶⁵ Motion for Review, para. 124.

⁶⁶ Motion for Review, para. 125.

⁶⁷ Response, para. 41.

⁶⁸ Response, paras 42-57.

⁶⁹ Response, para. 45. See also Response, paras 46-47.

⁷⁰ Response, para. 50. See also Response, para. 49.

⁷¹ Response, para. 49. See also Response, paras 51-53.

⁷² See Response, paras 45-47.

⁷³ Response, para. 55. See also Response, para. 196.

practice”.⁷⁴ The Registrar asserts that it is only once the accused refuses to reimburse the Tribunal that he seeks an order from the Trial Chamber pursuant to Rule 45(E) of the Rules.⁷⁵ In this context, the Registrar claims that the Decision on Means merely decided that Praljak had to reimburse the Tribunal and gave him the opportunity to do so.⁷⁶ The Registrar also notes that the Decision on Means stayed both the withdrawal of assigned counsel and the recovery of funds to ensure Praljak’s rights during the instant review.⁷⁷

24. The Registrar further asserts that the Decision on Means was procedurally fair in all respects and that its findings were based on all available information, including documents provided by Praljak, information provided by his counsel and third parties, information obtained from the Croatian government, and information that was otherwise available to the public.⁷⁸ The Registrar also contends that this information was provided to Praljak when requested and that Praljak was given multiple opportunities to comment on the Registrar’s findings.⁷⁹ Moreover, the Registrar asserts that Praljak’s submissions regarding the value of various assets were taken into consideration “where it was reasonable based on the evidence and circumstances to do so”.⁸⁰ The Registrar also submits that Praljak frustrated the investigation into his means, which caused the lengthy delay in issuing the Decision on Means,⁸¹ and that in any event, Praljak has enjoyed Tribunal-funded counsel throughout this entire time, “despite his [REDACTED] means”.⁸²

25. In response to Praljak’s arguments concerning the calculation of defence costs, the Registrar submits, *inter alia*, that neither the Directive nor the relevant Tribunal jurisprudence requires that the Decision on Means include an itemized statement of the amount to be recovered, but that such an itemization would have been provided to Praljak upon request.⁸³ The Registrar notes, however, that the calculation was based on the amount paid to Praljak’s counsel since the Decision Assigning Counsel.⁸⁴

26. Finally, the Registrar contends that the assessment of Praljak’s means, [REDACTED],⁸⁵ [REDACTED],⁸⁶ [REDACTED],⁸⁷ [REDACTED],⁸⁸ [REDACTED],⁸⁹ [REDACTED],⁹⁰

⁷⁴ Response, para. 56.

⁷⁵ Response, para. 56.

⁷⁶ Response, para. 57.

⁷⁷ Response, para. 57.

⁷⁸ Response, paras 58, 61. *See also* Response, paras 42-43.

⁷⁹ Response, paras 58-59, 61.

⁸⁰ Response, para. 58.

⁸¹ Response, para. 59. *See also* Response, paras 58, 60.

⁸² Response, para. 59. *See also* Response, paras 58, 60, 66.

⁸³ Response, paras 64-65.

⁸⁴ Response, paras 63-64.

⁸⁵ *See* Response, paras 68-89.

⁸⁶ *See* Response, paras 90-108.

⁸⁷ *See* Response, paras 109-121.

[REDACTED],⁹¹ [REDACTED],⁹² was reasonably made on the balance of probabilities.⁹³ According to the Registrar, Praljak repeatedly failed to disclose all of his assets [REDACTED].⁹⁴

27. In reply, Praljak maintains, *inter alia*, that the Registrar was required to demonstrate that his means had changed or that they were not fully declared.⁹⁵ Praljak also emphasizes that the Reassignment Decisions imply the existence of legal aid and thus “implicitly assume[] that the Accused cannot bear the costs of his Defence”.⁹⁶ In addition, Praljak asserts that irrespective of whether he could have obtained the publicly available documents relied upon by the Registrar, the Registrar should have provided him the opportunity to respond thereto.⁹⁷

28. The Registrar replies that the Reply should be dismissed, as it includes an “untimely request to have the Additional Materials form part of the review process” and repeats previous submissions.⁹⁸ In the case that the Reply is not dismissed, the Registrar offers “clarifying remarks to aid the President in deciding this matter” and “addresses certain points raised [by Praljak’s Reply] out an abundance of caution”.⁹⁹ Specifically, the Registrar contends that Praljak improperly submitted the Additional Materials through a personal *ex parte* submission and further notes that the Additional Materials could have been incorporated into the Motion by Praljak’s counsel.¹⁰⁰ The Registrar also notes that, in view of the foregoing, the Registry did not divert “otherwise encumbered resources towards translating the Additional Materials” and did not address the Additional Materials in the Response.¹⁰¹

V. DISCUSSION

A. Preliminary Matters

29. At the outset, I note that paragraph 5 of the Practice Direction provides that the length of motions filed before a Chamber, other than those filed with regard to appeals from judgement,

⁸⁸ See Response, paras 122-131.

⁸⁹ See Response, paras 132-149.

⁹⁰ See Response, paras 150-162.

⁹¹ See Response, paras 163-185.

⁹² See Response, paras 186-193.

⁹³ Response, paras 67, 195.

⁹⁴ Response, para. 194.

⁹⁵ Reply, paras 13-20. I observe that Praljak seeks leave to reply to the Response. Reply, paras 5, 86. Given that a party generally has the right to reply within the time limits prescribed therefore, I consider this issue moot and will accordingly consider the Reply.

⁹⁶ Reply, para. 18. See also Reply, paras 19-20.

⁹⁷ Reply, para. 25.

⁹⁸ Reply to Reply, para. 2. See also Reply to Reply, paras 1, 3.

⁹⁹ Reply to Reply, para. 4. See also Reply to Reply, paras 11-29.

¹⁰⁰ Reply to Reply, paras 5-9.

¹⁰¹ Reply to Reply, para. 10. See also Reply to Reply, para. 9.

interlocutory appeals, and Rule 115 motions, shall not exceed 3,000 words. Moreover, paragraph 7 of the Practice Direction provides that “[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”. While these provisions typically refer to motions filed before a Chamber, I consider that they apply, *mutatis mutandis*, to motions filed before the President.¹⁰² I observe that the Motion for Review exceeds the prescribed word limit by 7,755 words¹⁰³ and that Praljak did not seek prior authorization as required by paragraph 7 of the Practice Direction.¹⁰⁴ Nevertheless, I find that it is in the interest of judicial economy to address the merits of the Motion for Review in order to come to a final resolution in this case.¹⁰⁵ I further consider that, in light of the length and complexity of the Decision on Means, there are exceptional circumstances that justify the oversized filing of the Motion for Review.

30. Turning to Praljak’s request that I consider the Additional Materials in order to properly assess his case,¹⁰⁶ I recall that a review of an administrative decision is not a rehearing. Instead, it “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”.¹⁰⁷ Accordingly, it is not within my purview to conduct a substantive assessment of the Additional Materials. Rather, my review of the Registrar’s decision is limited to assessing whether the Decision on Means was reasonable.

31. In any event, I note that, according to the Registrar, the Additional Materials consist of a 103-page letter from Praljak containing submissions on the conclusions reached in the Decision on Means, as well as over 100 separate documents divided over 66 annexes.¹⁰⁸ Having conducted a preliminary review of the Additional Materials, the Registrar concluded that the Additional Materials contain some new and un-translated documents and that Praljak makes submissions that he failed to put forth before.¹⁰⁹ In this context, the Registrar decided not to consider the Additional Materials in the Response, observing that the materials did not form part of the Motion for Review, and, in any case, were submitted following the conclusion of the Article 9 Inquiry into Praljak’s

¹⁰² See *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. See also *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4-A, Decision on Vojislav Šešelj’s Motion to Disqualify Judges Arlette Ramaroson, Mehmet Güney, and Andréia Vaz, 10 January 2013 (“Šešelj Decision”), para. 17.

¹⁰³ See Motion for Review, p. 33 (indicating that the Motion for Review totals 10,755 words). Paragraph 5 of the Practice Direction provides that the length of motions filed before a Chamber, other than those filed with regard to appeals from judgement, interlocutory appeals, and Rule 115 motions, shall not exceed 3,000 words.

¹⁰⁴ See Motion for Review, para. 122.

¹⁰⁵ Cf. Šešelj Decision, para. 17.

¹⁰⁶ Reply, paras 11-12. I observe that Praljak does not challenge the Registrar’s failure to take into account the Additional Materials in the Response. See generally Reply.

¹⁰⁷ *Supra*, para. 6.

¹⁰⁸ Registrar’s Submission on Additional Materials, para. 10.

¹⁰⁹ Registrar’s Submission on Additional Materials, para. 11.

means.¹¹⁰ I recall in this regard that Article 8(B) of the Directive requires a legal aid applicant to “provide or facilitate the production of information required to establish his ability to remunerate counsel” during the Registrar’s investigation. I further observe that Praljak was requested to provide information regarding his resources throughout the investigation into his means and was provided with the opportunity to respond to the Registrar’s inquiry on multiple occasions, but that he repeatedly frustrated the process and refused to assist the Registrar.¹¹¹ In these circumstances, I consider that the Registrar was reasonable in excluding the Additional Materials from its assessment in the Response and acted in accordance with the Directive. Accordingly, and in light of the fact that a review of an administrative decision is not a rehearing, I will not consider the Additional Materials.

B. Compliance with Legal Requirements and Fairness of the Decision

32. As an initial matter, I note that Praljak’s submission that the Decision on Means contravenes the standards for assigning and withdrawing counsel is premised, in part, on his understanding that prior decisions issued in his case, most notably the Decision Assigning Counsel and the Reassignment Decisions, resolved the question of legal aid in his favour.¹¹² I recall, however, that the Decision Assigning Counsel was issued in accordance with the Trial Chamber’s Decision on Assignment of Counsel, in which the Trial Chamber ordered the Registrar to assign counsel to Praljak in the interests of justice while noting that “the information so far provided by the Accused remains[] incomplete and does not enable an adequate assessment of the financial means available to the Accused for his own defence costs”.¹¹³ Accordingly, I consider that it is apparent from the language of the Decision on Assignment of Counsel that the investigation into Praljak’s ability to remunerate counsel remained ongoing, notwithstanding the assignment of counsel. Similarly, I am of the view that the Reassignment Decisions’ omission of any reference to the question of legal aid does not indicate the Registrar’s completion of the investigation into Praljak’s eligibility for legal aid. In view of the foregoing, I do not find that the Registrar erred by failing to demonstrate that Praljak’s financial resources had changed since the Decision Assigning Counsel.

33. Turning to Praljak’s remaining arguments, I first note that the neither the Directive nor the Rules require the Registrar to provide Praljak with an itemized specification of the expenses he is required to reimburse the Tribunal. Nevertheless, I am of the view that an accused should have

¹¹⁰ Registrar’s Submission on Additional Materials, para. 12.

¹¹¹ See Decision on Means, pp. 2-3; Appendix I, para. 39 (noting five letters from the Registrar to Praljak, dated 11 January 2007, 20 July 2007, 11 December 2008, 26 November 2009, and 1 October 2010, informing Praljak of the Registrar’s findings and inviting Praljak to respond). See also Decision on Assignment of Counsel, para. 13. Cf. *Krajišnik* Decision, para. 19.

¹¹² See Motion for Review, paras 25-30.

¹¹³ Decision on Assignment of Counsel, para. 13.

access to a detailed account of the costs he is expected to reimburse, if so requested. As Praljak has now requested such an itemization, I consider it reasonable that the Registrar provide him with one. However, I do not find that the absence of such a specification in the Decision on Means constitutes grounds for quashing the decision.

34. I am also not persuaded that the Decision on Means should be quashed based on Praljak's claim that the Registrar subjected him to "special treatment" by requiring him to provide information "that he did not have and that he could not have".¹¹⁴ Praljak provides no support or further explanation for his submission in this regard, thus I consider his argument to be without merit.

35. Turning to Praljak's assertion that the Registrar "needs to present evidence that the Accused has [...] failed to bring to [the Registrar's] attention some of his assets",¹¹⁵ I recall that the burden of proof is on the applicant for legal aid to demonstrate his inability to remunerate counsel.¹¹⁶ Once the applicant has provided information regarding his inability to remunerate counsel, the burden of proof shifts to the Registrar to prove otherwise, based on the balance of probabilities.¹¹⁷ More specifically, in considering a request for legal aid, the Registrar is required to evaluate the relevant information and to determine whether, more probably than not, what is asserted is true.¹¹⁸ I recall in this regard that

[s]atisfaction that what is asserted is more probably true than not will in turn depend on the nature and the consequences of the matter to be proved. The more serious the matter asserted, or the more serious the consequences flowing from a particular finding, the more difficult it will be to satisfy the relevant tribunal that what is asserted is more probably true than not.¹¹⁹

Accordingly, the Registrar was required to determine whether the relevant information regarding Praljak's assets, including Praljak's own valuations and explanations, was more probably true than not. I will examine the Registrar's application of this principle in more detail below, when discussing the individual resources taken into account in the Decision on Means.

36. Regarding the length of time it took for the Registrar to issue the Decision on means, I first note that Praljak is unconvincing insofar as he submits that the Registrar should not have taken so long to determine that Praljak had the means to remunerate counsel.¹²⁰ While I consider eight years an inordinately long time to come to a determination on an accused's ability to remunerate counsel,

¹¹⁴ Motion for Review, para. 37.

¹¹⁵ Motion for Review, para. 39. *See also* Motion for Review, paras 38, 40-41.

¹¹⁶ *See supra*, para. 10.

¹¹⁷ Žigić Decision, para. 12.

¹¹⁸ Žigić Decision, para. 12.

¹¹⁹ Žigić Decision, para. 12.

¹²⁰ *See* Motion for Review, paras 37, 112.

I note that Praljak consistently frustrated the Registrar's investigation into his means, refusing to provide information and refusing to comment on information gathered by the Registrar when offered the opportunity to do so.¹²¹ I thus consider that Praljak significantly contributed to the delay in the issuance of the Decision on Means.

37. I similarly find unpersuasive Praljak's assertion that he probably would have chosen to represent himself or to only have one counsel had he known in advance that he would be required to reimburse the Tribunal for the costs incurred for the defence of his case.¹²² As set out above, I do not find Praljak's reliance on the Decision Assigning Counsel as the final determination of the question regarding his entitlement to legal aid reasonable, given the ongoing nature of the investigation into his means and the express language of the Trial Chamber's Decision on Assignment of Counsel.¹²³ Accordingly, I am of the view that Praljak should have remained aware of the possibility that the Registrar could come to an adverse determination regarding his eligibility for legal aid. Moreover, I recall that Praljak's continued frustration of the investigation into his means significantly contributed to the delay in the issuance of the Decision on Means.¹²⁴ I also note that while Praljak relies on certain cases to show that the Registrar unfairly investigated his means after counsel was assigned to him in the interest of justice,¹²⁵ these cases involve factual scenarios not present here. Specifically, Praljak refers to cases in which the accused did not apply for legal aid but were assigned counsel in the interests of justice since they had chosen to represent themselves.¹²⁶ In light of the foregoing, I do not consider that the length of the time the Registrar took to investigate Praljak's means and to issue the Decision on Means constitutes grounds upon which to quash the decision.

38. With respect to Praljak's assertion that it would be against the interests of justice to deny him counsel at the appeal phase of his case, I first note that the withdrawal of assigned counsel following the issuance of the trial judgement was suspended until a final decision was rendered with respect to the Motion for Review.¹²⁷ I also recall that the present review is concerned with the reasonableness of the Registrar's determination that Praljak is capable of remunerating counsel.¹²⁸ In light of my finding that, as a general matter, the Registrar was reasonable in determining that

¹²¹ See Decision on Means, pp. 2-3; Appendix I, para. 39. See also Decision on Assignment of Counsel, para. 13. Cf. *Krajišnik* Decision, para. 19.

¹²² See Motion for Review, paras 112-113.

¹²³ See *supra*, para. 32.

¹²⁴ See Decision on Means, pp. 2-3; Appendix I, para. 39. See also Decision on Assignment of Counsel, para. 13.

¹²⁵ See Motion for Review, para. 116.

¹²⁶ See *Karadžić* Decision on Assignment of Counsel; *Šešelj* Decision on Assignment of Counsel.

¹²⁷ Interim Order, p. 1.

¹²⁸ See *supra*, para. 6.

Praljak is able to remunerate counsel and thus is not eligible for legal aid,¹²⁹ I consider Praljak's claim that it is against the interests of justice to deny him counsel to be without merit.

39. Finally, turning to the Registrar's authority to order the reimbursement of legal aid provided to Praljak, I recall that Rule 45(E) of the Rules provides that

[w]here a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the *Chamber* may, *on application by the Registrar*, make an order of contribution to recover the cost of providing counsel.¹³⁰

In this regard, I observe that the Decision on Means states that the Registrar "decides that the Accused shall reimburse the Tribunal [...] and directs the Accused to do so promptly".¹³¹ A plain reading of the Decision on Means reflects that the Registrar ordered Praljak to reimburse the Tribunal for the amount owed. While this may constitute "Registry practice" to avoid "unnecessary motion practice",¹³² the Registrar's order contravenes the clear wording of Rule 45(E) of the Rules, which requires the Registrar to apply to the relevant chamber, which may then make an order of contribution to recover the cost of providing counsel. I therefore consider that the Registrar exceeded his authority by ordering Praljak to reimburse the Tribunal, rather than applying to the relevant chamber. The impact of this error will be considered later in this decision.

C. Determination of Praljak's Assets

40. Turning to the Registrar's assessment of Praljak's available resources, I consider below Praljak's submissions as they relate to particular assets relied upon in the Decision on Means. I recall at the outset that in assessing an accused's means for the purpose of an application for legal aid, the Registrar must consider all of the relevant information and make a determination on the balance of probabilities.¹³³ More specifically, in considering a request for legal aid, the Registrar is required to evaluate the relevant information and to determine whether, more probably than not, what is asserted is true.¹³⁴ I further recall that an appeal of an administrative decision made by the Registrar is not a rehearing.¹³⁵ Accordingly, the appellant bears the onus of persuasion, and he must show that the alleged error occurred and that the error significantly affected the administrative decision to his detriment.¹³⁶

¹²⁹ See *infra*, para. 82.

¹³⁰ Emphasis added.

¹³¹ Decision on Means, p. 7.

¹³² Response, para. 56.

¹³³ See *supra*, para. 36.

¹³⁴ See *supra*, para. 35.

¹³⁵ See *supra*, para. 6.

¹³⁶ See *supra*, para. 7.

1. [REDACTED]

(a) Submissions

41. [REDACTED].¹³⁷ [REDACTED].¹³⁸ [REDACTED].¹³⁹ [REDACTED].¹⁴⁰
[REDACTED].¹⁴¹ [REDACTED].¹⁴² [REDACTED].¹⁴³ [REDACTED].¹⁴⁴ [REDACTED].¹⁴⁵

42. [REDACTED].¹⁴⁶ [REDACTED].¹⁴⁷ [REDACTED].¹⁴⁸ [REDACTED].¹⁴⁹ [REDACTED].¹⁵⁰
[REDACTED].¹⁵¹

43. [REDACTED].¹⁵² [REDACTED].¹⁵³

44. [REDACTED].¹⁵⁴ [REDACTED].¹⁵⁵

(b) Discussion

45. First, I note that Section 5(f) of the Registry Policy provides that in determining a legal aid applicant's disposable means, the Registrar may include any assets previously owned by an applicant that were transferred to another person for the purpose of concealing them.¹⁵⁶ More specifically, the Registrar may consider whether the applicant transferred assets to avoid his obligations under the Directive or otherwise to conceal or obfuscate the extent of his own assets,¹⁵⁷

¹³⁷ See Motion for Review, paras 49-65.

¹³⁸ Motion for Review, para. 49.

¹³⁹ Motion for Review, paras 50-54.

¹⁴⁰ Motion for Review, paras 56-59, 64-65. See also Reply, paras 36, 38-41.

¹⁴¹ Motion for Review, paras 58-59.

¹⁴² Motion for Review, para. 64, citing *Krajišnik* Decision, para. 28.

¹⁴³ Motion for Review, para. 64.

¹⁴⁴ Motion for Review, paras 61-64.

¹⁴⁵ Motion for Review, paras 60-63, 65. See also Reply, para. 41.

¹⁴⁶ Response, paras 68-69, n. 87.

¹⁴⁷ Response, para. 69.

¹⁴⁸ Response, para. 74.

¹⁴⁹ See Response, para. 79.

¹⁵⁰ Response, para. 70. See also Response, paras 71-72.

¹⁵¹ Response, paras 73-77.

¹⁵² Response, paras 80-81.

¹⁵³ Response, paras 86-87.

¹⁵⁴ Reply, para. 40.

¹⁵⁵ Reply, para. 40.

¹⁵⁶ Section 5(f) of the Registry Policy (noting that assets included in disposable means incorporate "any assets previously owned by the applicant, his spouse and persons with whom he habitually resides [...] where the applicant, his spouse or the persons with whom he habitually resides assigned or transferred any interest in those assets to another person for the purpose of concealing those assets").

¹⁵⁷ See *Krajišnik* Decision, para. 22.

which may be indicated by such factors as whether valuable assets were transferred for no consideration.¹⁵⁸ [REDACTED].¹⁵⁹ [REDACTED]. [REDACTED]. [REDACTED].¹⁶⁰

46. [REDACTED]. I note that the Registry Policy defines a principal family home as “the principal place of residence of the applicant, his spouse or persons with whom he habitually resides, owned by the applicant, his spouse or persons with whom he habitually resides; usually where the applicant would reside if he were not in custody”.¹⁶¹ [REDACTED]. [REDACTED].¹⁶² [REDACTED].

2. [REDACTED]

(a) Submissions

47. [REDACTED].¹⁶³ [REDACTED].¹⁶⁴ [REDACTED].¹⁶⁵ [REDACTED].¹⁶⁶

48. [REDACTED].¹⁶⁷ [REDACTED]. [REDACTED].¹⁶⁸ [REDACTED].¹⁶⁹

49. [REDACTED].¹⁷⁰ [REDACTED].¹⁷¹ [REDACTED].¹⁷² [REDACTED].¹⁷³

50. [REDACTED].¹⁷⁴ [REDACTED].¹⁷⁵ [REDACTED].¹⁷⁶

(b) Discussion

51. I recall that the Registrar may take into account whether valuable assets were transferred without consideration when determining whether the applicant transferred assets for the purpose of concealment.¹⁷⁷ [REDACTED].¹⁷⁸ [REDACTED].¹⁷⁹ [REDACTED].¹⁸⁰ [REDACTED].

¹⁵⁸ See Decision on Request for Review, para. 20.

¹⁵⁹ Appendix I, paras 52-53.

¹⁶⁰ See *supra*, n. 153.

¹⁶¹ Section 4 of the Registry Policy.

¹⁶² Motion for Review, para. 49.

¹⁶³ See Motion for Review, paras 66-75.

¹⁶⁴ Motion for Review, paras 67-69.

¹⁶⁵ Motion for Review, paras 70-71. See also Reply, para. 44.

¹⁶⁶ Motion for Review, paras 72-75. See also Reply, paras 45-49.

¹⁶⁷ Response, paras 90-108.

¹⁶⁸ Response, para. 91.

¹⁶⁹ Response, paras 92-95. See also Response, para. 75.

¹⁷⁰ Response, paras 98-99, nn. 134, 137.

¹⁷¹ Response, paras 98-99.

¹⁷² Response, para. 99.

¹⁷³ Response, paras 96-107.

¹⁷⁴ Reply, para. 42.

¹⁷⁵ Reply, paras 46-50.

¹⁷⁶ Reply, para. 47.

52. [REDACTED].¹⁸¹ [REDACTED].

3. [REDACTED]

(a) Submissions

53. [REDACTED].¹⁸² [REDACTED].¹⁸³ [REDACTED].¹⁸⁴ [REDACTED].¹⁸⁵
[REDACTED].¹⁸⁶ [REDACTED].¹⁸⁷ [REDACTED].¹⁸⁸

54. [REDACTED].¹⁸⁹ [REDACTED].¹⁹⁰ [REDACTED].¹⁹¹ [REDACTED].¹⁹²
[REDACTED].¹⁹³

55. [REDACTED].¹⁹⁴ [REDACTED].¹⁹⁵ [REDACTED].¹⁹⁶

(b) Discussion

56. [REDACTED]. However, I recall my finding that the Decision on Means is the first substantive decision regarding Praljak's eligibility for legal aid and that Article 19(B) of the Directive accordingly does not apply to the Registrar's assessment of Praljak's disposable means.¹⁹⁷ I therefore consider that the Registrar acted in accordance with the Directive when he included [REDACTED] as part of Praljak's available means and that Praljak's disclosure of [REDACTED] in the 2004 Request for Legal Aid is irrelevant in this regard.

¹⁷⁷ See *Krajišnik* Decision, para. 22; Decision on Request for Review, para. 20.

¹⁷⁸ See Motion for Review, paras 67, 70.

¹⁷⁹ Appendix I, paras 81-84.

¹⁸⁰ Case No. IT-04-74-PT, T. 19 July 2004, p. 80 (pre-trial hearing statement by Praljak's counsel that Praljak "has been aware for a long time that [the] investigation is targeting him and that an indictment is very likely").

¹⁸¹ Appendix I, paras 85-89, 95-96.

¹⁸² Motion for Review, para. 76.

¹⁸³ Motion for Review, paras 43-45, 76, n. 38. See also *supra*, paras 17, 19.

¹⁸⁴ Motion for Review, para. 76.

¹⁸⁵ Motion for Review, para. 77.

¹⁸⁶ Motion for Review, paras 78-79.

¹⁸⁷ Motion for Review, para. 80.

¹⁸⁸ Motion for Review, para. 82. See also Reply, paras 53-54.

¹⁸⁹ Response, para. 109.

¹⁹⁰ Response, para. 110.

¹⁹¹ Response, paras 116-117.

¹⁹² Response, paras 111-119.

¹⁹³ Response, para. 121.

¹⁹⁴ Reply, para. 53.

¹⁹⁵ Reply, paras 56-57.

¹⁹⁶ See Reply, para. 58.

¹⁹⁷ See *supra*, para. 32.

57. [REDACTED].¹⁹⁸ [REDACTED].

58. [REDACTED]. I recall in this regard that the burden is on the applicant to “update his declaration of means at any time a change relevant to his declaration of means occurs”.¹⁹⁹ I further recall that Praljak was provided with the opportunity to respond to the Registrar’s findings on multiple occasions,²⁰⁰ [REDACTED]. [REDACTED].

4. [REDACTED]

(a) Submissions

59. [REDACTED].²⁰¹ [REDACTED].²⁰² [REDACTED].²⁰³ [REDACTED].²⁰⁴
[REDACTED].²⁰⁵

60. [REDACTED].²⁰⁶ [REDACTED].²⁰⁷ [REDACTED].²⁰⁸ [REDACTED].²⁰⁹
[REDACTED].²¹⁰

61. [REDACTED].²¹¹ [REDACTED].²¹² [REDACTED].²¹³

(b) Discussion

62. [REDACTED], I again recall my finding that the Decision on Means is the first substantive decision regarding Praljak’s eligibility for legal aid, thus Article 19(B) of the Directive does not apply to the Registrar’s assessment of Praljak’s disposable means.²¹⁴ I therefore consider it irrelevant that Praljak disclosed the [REDACTED] in his 2004 Request for Legal Aid, and I find that the Registrar acted in accordance with the Directive when he included [REDACTED] as part of Praljak’s available means.

¹⁹⁸ Appendix I, paras 219-222.

¹⁹⁹ Article 7(B) of the Directive.

²⁰⁰ See Appendix I, para. 39.

²⁰¹ Motion for Review, para. 83.

²⁰² See Motion for Review, paras 43-45, 83.

²⁰³ Motion for Review, para. 84.

²⁰⁴ Motion for Review, para. 85.

²⁰⁵ Motion for Review, paras 86-87.

²⁰⁶ Response, para. 122.

²⁰⁷ Response, para. 123.

²⁰⁸ Response, para. 126. [REDACTED]. Response, para. 126.

²⁰⁹ Response, para. 127.

²¹⁰ Response, para. 131.

²¹¹ Reply, paras 61-62.

²¹² See Reply, para. 63.

²¹³ Reply, paras 64-65.

²¹⁴ See *supra*, para. 32.

63. [REDACTED].²¹⁵ [REDACTED]. [REDACTED].²¹⁶ [REDACTED].²¹⁷ [REDACTED].

64. [REDACTED]. I recall in this regard that the burden is on the legal aid applicant to “update his declaration of means at any time a change relevant to his declaration of means occurs”.²¹⁸ Lastly, I recall that Praljak was provided with the opportunity to respond to the Registrar’s findings on multiple occasions, [REDACTED].²¹⁹

5. [REDACTED]

(a) Submissions

65. [REDACTED].²²⁰ [REDACTED].²²¹

66. [REDACTED].²²² [REDACTED].²²³ [REDACTED].²²⁴ [REDACTED].²²⁵
[REDACTED].²²⁶ [REDACTED].²²⁷

67. Praljak replies that the only relevant issue in this case is the establishment of his current disposable means, [REDACTED].²²⁸ [REDACTED].²²⁹ [REDACTED].²³⁰

(b) Discussion

68. [REDACTED], I recall that the Registrar may take into account whether valuable assets were transferred without consideration when determining whether the applicant transferred assets for the purpose of concealment.²³¹ [REDACTED].²³² [REDACTED]. [REDACTED]. I recall in this regard that the burden is on the legal aid applicant to “update his declaration of means at any time a change relevant to his declaration of means occurs”.²³³ I further recall that Praljak was provided

²¹⁵ See *supra*, para. 47.

²¹⁶ See Motion for Review, para. 84.

²¹⁷ Response, para. 127.

²¹⁸ Article 7(E) of the Directive.

²¹⁹ See Appendix I, para. 39.

²²⁰ Motion for Review, paras 88-89. See also Reply, paras 66-67.

²²¹ Motion for Review, para. 90. See also Reply, para. 68.

²²² Response, para 132.

²²³ Response, para. 133.

²²⁴ See Response, paras 133-143.

²²⁵ Response, paras 143, 147.

²²⁶ Response, para. 146.

²²⁷ Response, para. 148.

²²⁸ Reply, paras 66-67.

²²⁹ Reply, para. 67.

²³⁰ Reply, para. 68.

²³¹ See *Krajišnik* Decision, para. 22; Decision on Request for Review, para. 20.

²³² See Appendix I, paras 176-186.

²³³ Article 7(E) of the Directive.

with the opportunity to respond to the Registrar's findings on multiple occasions, [REDACTED].²³⁴ [REDACTED].²³⁵ Indeed, my review is limited to considering whether, in light of the factors enumerated above, the Registrar was reasonable in concluding that Praljak was able to remunerate counsel.²³⁶ I also recall that once it has been established that an asset was transferred for the purpose of concealment, that asset may be included as part of a legal aid applicant's disposable means, even though the applicant no longer owns it.²³⁷

6. [REDACTED]

(a) Submissions

69. [REDACTED].²³⁸ [REDACTED].²³⁹ [REDACTED].²⁴⁰ [REDACTED].²⁴¹
[REDACTED].²⁴²

70. [REDACTED].²⁴³ [REDACTED].²⁴⁴ [REDACTED].²⁴⁵ [REDACTED].²⁴⁶
[REDACTED].²⁴⁷ [REDACTED].²⁴⁸

(b) Discussion

71. I recall that in assessing Praljak's assets, the Registrar was required to evaluate all the relevant information and make a determination on the balance of probabilities as to the truthfulness of that information.²⁴⁹ [REDACTED]. [REDACTED].²⁵⁰ [REDACTED]. [REDACTED].

72. With regard to the Registrar's valuation [REDACTED], I am not persuaded that [REDACTED] as reflected in the Decision on Means is incorrect, considering that the Registrar's assessment was based on Praljak's own information.²⁵¹

²³⁴ See Appendix I, para. 39.

²³⁵ See *supra*, para. 6. I again note that should Praljak believe that he currently does not possess the means to remunerate counsel, he may submit a new application for legal aid to the Registrar.

²³⁶ See *supra*, para. 6.

²³⁷ See *supra*, para. 45, n. 153.

²³⁸ Motion for Review, paras 91-92.

²³⁹ Motion for Review, para. 92.

²⁴⁰ Motion for Review, para. 93.

²⁴¹ Motion for Review, para. 94.

²⁴² Motion for Review, para. 95.

²⁴³ Response, para. 159. See also Response, paras 151-158, 160-162.

²⁴⁴ Response, paras 152-154.

²⁴⁵ Response, para. 155.

²⁴⁶ Response, para. 156.

²⁴⁷ Response, paras 158-160.

²⁴⁸ Response, para. 160.

²⁴⁹ See *supra*, para. 36.

²⁵⁰ See Response paras 157, 160.

7. [REDACTED]

(a) Submissions

73. [REDACTED].²⁵² [REDACTED].²⁵³ [REDACTED].²⁵⁴ [REDACTED].²⁵⁵ [REDACTED].²⁵⁶

74. [REDACTED].²⁵⁷ [REDACTED].²⁵⁸ [REDACTED].²⁵⁹ [REDACTED].²⁶⁰ [REDACTED].²⁶¹ [REDACTED].²⁶²

75. [REDACTED].²⁶³ [REDACTED].²⁶⁴ [REDACTED].²⁶⁵

(b) Discussion

76. I recall that in determining whether the applicant transferred assets for the purpose of concealment, the Registrar may take into account whether valuable assets were transferred without consideration.²⁶⁶ [REDACTED].²⁶⁷ [REDACTED].²⁶⁸ [REDACTED].

77. [REDACTED]. [REDACTED].²⁶⁹ [REDACTED].²⁷⁰ [REDACTED].

8. [REDACTED]

(a) Submissions

78. [REDACTED].²⁷¹ [REDACTED].²⁷² [REDACTED].²⁷³ [REDACTED].²⁷⁴

²⁵¹ See Response, para. 160. See also Appendix I, para. 202.

²⁵² Motion for Review, paras 98-102, 105. See also Reply, paras 76, 79.

²⁵³ Motion for Review, para. 98.

²⁵⁴ Motion for Review, paras 99, 102. See also Reply, para. 74.

²⁵⁵ Motion for Review, para. 103.

²⁵⁶ Motion for Review, para. 104. See also Reply, paras 77-79.

²⁵⁷ Response, paras 164-167.

²⁵⁸ Response, para. 164.

²⁵⁹ Response, paras 164-165.

²⁶⁰ Response, paras 166-167.

²⁶¹ Response, para. 168. See also Response, paras 169-184.

²⁶² Response, para. 185.

²⁶³ Reply, para. 76.

²⁶⁴ Reply, para. 77.

²⁶⁵ Reply, para. 78.

²⁶⁶ See *Krajišnik* Decision, para. 22; Decision on Request for Review, para. 20.

²⁶⁷ Appendix I, paras 113, 123.

²⁶⁸ Appendix I, paras 118-123.

²⁶⁹ Appendix I, para. 150.

²⁷⁰ Appendix I, paras 151, 154-155.

²⁷¹ Motion for Review, para. 106.

²⁷² Motion for Review, para. 106.

79. [REDACTED].²⁷⁵ [REDACTED].²⁷⁶ [REDACTED].²⁷⁷ [REDACTED].²⁷⁸
[REDACTED].²⁷⁹

(b) Discussion

80. I note that, pursuant to Section 10 of the Registry Policy, the standard formula for calculating a legal aid applicant's living expenses begins by establishing the average monthly expenditure of a household in the relevant country, based on official documentation from that country's government, and adjusting that amount to reflect the actual size of the applicant's household. Accordingly, I consider that the Registrar acted reasonably in assessing Praljak's living expenses based on the expenses of an average Croatian household, adjusted for a household of two members.²⁸⁰ [REDACTED]. [REDACTED]. Accordingly, I consider that Praljak failed to demonstrate that the Registrar took into account irrelevant information or erred in reaching his determination with respect to assessing Praljak's disposable income.

9. Conclusion

81. In light of the above, I find that Praljak has failed to demonstrate that the Registrar took into account irrelevant information, acted contrary to the Directive or Registry Policy, or that the Registrar acted against the interests of justice. Accordingly, I consider that the Registrar acted reasonably and find no basis for quashing the Decision on Means.

VI. CONCLUSION

82. As set out above, I consider that the Registrar acted contrary to Rule 45(E) of the Rules by ordering Praljak to reimburse the Tribunal rather than applying to the relevant chamber for an order of contribution to recover the cost of providing counsel. Accordingly, the Registrar's decision with respect to this issue was erroneous. However, in all other respects, I find that the Decision on Means was reasonable and was made in conformity with the applicable legal provisions.

83. For the foregoing reasons, I:

²⁷³ Motion for Review, para. 107.

²⁷⁴ Motion for Review, para. 107.

²⁷⁵ Response, para. 186. *See also* Response, paras 187, 189-190.

²⁷⁶ Response, para. 188.

²⁷⁷ Response, para. 191.

²⁷⁸ Response, para. 191.

²⁷⁹ Response, para. 192.

²⁸⁰ *See* Appendix I, para. 229. *See also* Tolimir Decision, para. 40.

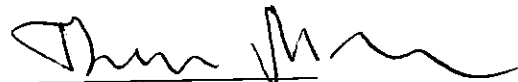
GRANT the Motion for Review in part and **REVERSE** the Decision on Means insofar as it orders Praljak to reimburse the Tribunal;

DENY the Motion for Review in all other respects; and

ORDER the Registrar to provide Praljak with an itemization of the costs to be recovered.

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

Done this 28th day of August 2013,
At The Hague,
The Netherlands.


Judge Theodor Meron
President

[Seal of the Tribunal]