



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

IT-04-74-A
A21098-A21094
26 October 2016

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RCM

Case No. IT-04-74-A
Date: 26 October 2016
Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge Liu Daqun
Judge Fausto Pocar
Judge Theodor Meron
Judge Bakone Justice Moloto

Registrar: Mr. John Hocking

Order of: 26 October 2016

PROSECUTOR

v.

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

PUBLIC

ORDER CONCERNING NON-RECEIPT OF FUNDS

The Office of the Prosecutor:

Mr. Douglas Stringer
Ms. Barbara Goy
Ms. Laurel Baig

Counsel for the Defence:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan QC for Mr. Bruno Stojić
Ms. Nika Pinter and Ms. Natacha Fauveau-Ivanović for Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Davor Lazić for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

THE APPEALS CHAMBER 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 (“Appeals Chamber” and “Tribunal”, respectively);

RECALLING that, pursuant to Rule 45(E) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), “[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”;

RECALLING the “Order on the Registrar’s Application Pursuant to Rule 45(E) of the Rules”, issued publicly by the Appeals Chamber on 13 May 2014 (“Order of Contribution”), in which it, *inter alia*, ordered Slobodan Praljak (“Praljak”) “to reimburse the Tribunal the amount of €2,807,611.10 for the costs it sustained in providing him with legal aid” either within 90 days of notification of that order or, in the alternative, “in monthly instalments over a three-year period, provided a minimum payment of 10% is received within 90 days of notification of this [O]rder [of Contribution]”;¹

RECALLING further the “Registrar’s Notice Concerning Non-Receipt of Funds”, filed publicly by the Deputy Registrar of the Tribunal (“Deputy Registrar”) on 16 September 2014 (“Notice of 16 September 2014”), in which the Deputy Registrar notified the Appeals Chamber that Praljak had not complied with the Order of Contribution;²

CONSIDERING that, as of the date of this order, being 29 months since the Order of Contribution, Praljak has neither reimbursed the full amount of €2,807,611.10 he owes to the Tribunal, nor has he opted for the payment of monthly instalments as offered by the Appeals Chamber in its Order of Contribution;³

FINDING therefore that Praljak has violated the Order of Contribution;

EXPRESSING its deep concern with respect to the amount of public funds Praljak must reimburse the Tribunal;

HEREBY REITERATES Praljak’s obligation to reimburse the Tribunal **the amount of €2,807,611.10** for the costs it sustained in providing him with legal aid;

¹ Order of Contribution, para. 24.

² Notice of 16 September 2014, paras 1, 4.

³ See Order of Contribution, para. 24.

ORDERS Praljak to reimburse the Tribunal **the total amount of €2,807,611.10 within 30 days of the date of the notification of this order** or, alternatively, to repay the total amount in **monthly instalments over a one year-period, provided a minimum of 10% is received within 30 days of notification of this order and thereafter a monthly instalment of €210,570.84 is received by the first day of every month, starting with the month following the payment of the 10% instalment;**

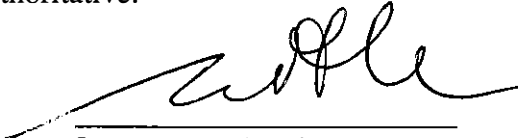
ORDERS Praljak to file a notification before the Appeals Chamber **within 7 days of the date of the notification of this order** indicating which method of reimbursement he has chosen; and

WARNS Praljak that in case he fails to comply with this order, the Appeals Chamber will take all appropriate action for its enforcement and the recovery of the amount due.

Judge Pocar appends a separate opinion.

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

Dated this twenty-sixth day of October 2016,
at The Hague,
The Netherlands.



Judge Carmel Agius
Presiding Judge

[Seal of the Tribunal]

I. SEPARATE OPINION OF JUDGE POCAR

1. In this Order, the Appeals Chamber “warns Praljak that in case he fails to comply with this order, the Appeals Chamber will take all appropriate action for its enforcement and the recovery of the amount due.”¹ While I am in agreement with this Order and the generic warning contained therein, I would have gone one step further and already warned Praljak that failure to comply with this Order may result in contempt of the Tribunal pursuant to Rule 77 of the Rules of Procedure and Evidence of the Tribunal (“Rules”). For the reasons mentioned below, I do not believe that a general warning is sufficient or that it is the most effective action to be taken in this case.

2. I recall that, in a long saga which spanned over nearly a decade, it was found that Praljak was entirely able to remunerate counsel in full and, therefore, was ineligible for the assignment of Tribunal-paid counsel despite having claimed so.² The President of the Tribunal at that time upheld this determination.³ Accordingly, the Registrar of the Tribunal (“Registrar”) invited Praljak to voluntarily comply with his obligation to reimburse the Tribunal for the costs of his defence, either in full or by instalments within 30 days from the receipt of the Registrar’s invitation.⁴ The Registrar provided Praljak with an itemization of the costs to be recovered, indicating that the total amount paid by the Tribunal for Praljak’s defence was € 2,807,611.10.⁵

3. Not only has Praljak ignored the Registrar’s request for reimbursement of the Tribunal,⁶ he has also blatantly violated the Appeals Chamber’s Order of Contribution issued on 13 May 2014, as correctly noted in this Order.⁷ Given the amount of public funds Praljak must reimburse the Tribunal and the need to recuperate these public funds before the closure of the Tribunal, I do not believe that issuing a general warning, even as a first step, is the most efficient approach. As mentioned above, I would have preferred issuing an additional warning that Praljak’s failure to comply with this Order may result in contempt of the Tribunal pursuant to Rule 77 of the Rules.

4. In this respect, I recall that our rules are clear and that, pursuant to Rule 77(A) of the Rules, the “Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and

¹ Order, p. 2.

² For the procedural background of this issue, see Order on the Registrar’s Application Pursuant to Rule 45(E) of the Rules, 13 May 2014 (“Order of Contribution”), paras 2-13 and references cited therein.

³ Decision on Slobodan Praljak’s Motion for Review of the Registrar’s Decision on Means, 25 July 2013 (confidential and *ex parte*) (public redacted version filed on 28 August 2013), paras 82-83. See also Order of Contribution, paras 11-12, 20-21.

⁴ Decision on Slobodan Praljak’s Request for Further Review, 7 October 2013, p. 2. See also Order of Contribution, para. 13.

⁵ Registrar’s Application for the Recovery of Legal Aid Funds, 20 January 2014 (public with a confidential and *ex parte* annex) (“Application”), Annex, pp. 1-2. See also Application, para. 7; Order of Contribution, para. 13.

⁶ Application, Annex.

⁷ Order, p. 1.

wilfully interfere with its administration of justice”,⁸ which covers any “conduct which tends to obstruct, prejudice or abuse the administration of justice”.⁹ I further recall that “[a]ny defiance of an order of a Chamber *per se* interferes with the administration of justice for the purposes of a conviction for contempt”.¹⁰ Accordingly, I consider that Praljak’s violation of the Order of Contribution issued on 13 May 2014 by the Appeals Chamber might constitute contempt of the Tribunal as his conduct clearly tends to obstruct, prejudice or abuse the administration of justice.

5. In light of the above, I would have strongly preferred to issue a warning to Praljak that failure to comply with this order may result in contempt of the Tribunal, pursuant to Rule 77 of the Rules, whose maximum penalty is a term of imprisonment not exceeding seven years, or a fine not exceeding €100,000, or both, rather than just issuing a general warning.

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

Dated this twenty-sixth day of October 2016,
at The Hague,
The Netherlands.



Judge Fausto Pocar

[Seal of the Tribunal]

⁸ I recall that the list of instances of contempt set forth in Rule 77(A)(i)-(v) of the Rules is not exhaustive. See, e.g., *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4, Decision on Failure to Remove Confidential Information from Public Website and Order in Lieu of Indictment, 9 May 2011 (confidential), para. 26; *Prosecutor v. Domagoj Margetić*, Case No. IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007, para. 13, referring to *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, para. 39. See also *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000 (“*Vujin* Judgment of 31 January 2000”), para. 26(b).

⁹ *Vujin* Judgment of 31 January 2000, para. 26(a)-(b). See also *ibid*, para. 16 and reference cited therein.

¹⁰ *Prosecutor v. Josip Jović*, Case No. IT-95-14 & 14/2-R77-A, Judgement, 15 March 2007, para. 30, referring to *Prosecutor v. Slobodan Milošević, Contempt Proceedings Against Kosta Bulatović*, Case No. IT-02-54-R77.4, Decision on Contempt of the Tribunal, 13 May 2005, para. 17; *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2-A, Judgement, 27 September 2006, para. 44; *In the Case Against Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Judgement, 19 May 2010 (public redacted version), para. 20. Cf. Rule 77bis(D) of the Rules (“In addition to a decision under paragraph (C), the Chamber may find the person in contempt of the Tribunal and impose a new penalty applying Rule 77(G), if that person was able to pay the fine within the specified time and has wilfully failed to do so. This penalty for contempt of the Tribunal shall be additional to the original fine imposed.”).