

**UNITED  
NATIONS**



International Tribunal for the  
Prosecution of Persons  
Responsible for Serious Violations of  
International Humanitarian Law  
Committed in the Territory of the  
Former Yugoslavia since 1991

Case No.: IT-04-74-A  
Date: 16 August 2017  
Original: English

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**THE PRESIDENT OF THE TRIBUNAL**

**Before:** Judge Carmel Agius, President  
**Registrar:** Mr. John Hocking  
**Decision of:** 16 August 2017

**PROSECUTOR**

v.

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

***CONFIDENTIAL AND EX PARTE***

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**DECISION ON SLOBODAN PRALJAK'S DEFENCE REQUEST  
FOR JUDICIAL REVIEW OF DECISION ON  
ADDITIONAL FUNDS**

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**Counsel for Mr. Slobodan Praljak:**

Ms. Nika Pinter

Ms. Natacha Fauveau-Ivanović

1. I, Carmel Agius, 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 “Slobodan Praljak’s Defence Request for Judicial Review of the OLAD’s Decision on Additional Funds” (“Defence Request for Review”), referred to me by the Registrar of the Tribunal on 3 March 2017 in accordance with Article 31(C) of the Directive on the Assignment of Defence Counsel.<sup>1</sup> In the Defence Request for Review, Counsel for Mr. Slobodan Praljak (“Defence” or “Counsel”) seek to challenge the 20 February 2017 decision of the Registry’s Office for Legal Aid and Defence Matters (“OLAD”), which declined to allocate additional funds to the Defence (“Impugned Decision”).<sup>2</sup> On 10 March 2017, the Registrar filed his submission with regard to the merits of the Defence Request for Review.<sup>3</sup>

## I. PROCEDURAL HISTORY

2. On 29 May 2013, Trial Chamber III of the Tribunal issued its judgement in the case of *Prosecutor v. Jadranko Prlić et al.*, Case Number IT-04-74-T (“Trial Judgement”). On 28 June 2013, the Defence filed a notice of appeal against the Trial Judgement,<sup>4</sup> for which the Registry allocated to the Defence 300 counsel hours and 300 support staff hours.<sup>5</sup>

3. On 26 July 2013, the Registrar withdrew his assignment of Counsel to Praljak.<sup>6</sup> The Registry later allocated up to 400 counsel hours for work performed by Counsel between the filing of the notice of appeal and this withdrawal of assignment.<sup>7</sup>

4. On 6 August 2014, the Registrar re-assigned Counsel to Praljak pursuant to Rule 45*ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”).<sup>8</sup> On 14 October 2014, the Registrar ranked Praljak’s appeal at “Complexity Level 3 (extremely difficult/leadership) for the duration of

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<sup>1</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-A (“*Prlić et al.*”), Registrar’s Submission Pursuant to Rule 33(B) Referring Mr. Slobodan Praljak’s Request for Review of OLAD’s Decision to the President, confidential and *ex parte*, 3 March 2017, para. 1 & Annex (containing the Defence Request for Review). I note that the Defence Request for Review was also filed, confidentially and *ex parte*, on the judicial record in this case on 24 February 2017.

<sup>2</sup> Defence Request for Review, Annex 1 (Letter from the Head of OLAD to Lead Counsel for Mr. Slobodan Praljak, 20 February 2017) (“Impugned Decision”).

<sup>3</sup> *Prlić et al.*, Registrar’s Submission Pursuant to Rule 33(B) Regarding Mr. Slobodan Praljak’s Request for Judicial Review of OLAD’s Decision on Additional Funds, confidential and *ex parte*, 10 March 2017 (“Registrar’s Submission”).

<sup>4</sup> *Prlić et al.*, Slobodan Praljak’s Notice of Appeal, 28 June 2013. *See also Prlić et al.*, Corrigendum to Slobodan Praljak’s Notice of Appeal with Annex, 29 July 2013.

<sup>5</sup> *See* Registrar’s Submission, para. 5. *See also* ICTY Defence Counsel – Appeals Legal Aid Policy, 18 April 2013 (“Appeals Legal Aid Policy”), para. 6.

<sup>6</sup> *See* Registrar’s Submission, para. 3. *See also Prlić et al.*, Registrar’s Decision, 6 August 2014 (“Registrar’s Decision of 6 August 2014”), p. 3.

<sup>7</sup> *See* Registrar’s Submission, fn. 14 & Annex 2 (Letter from the Acting Head of OLAD to Lead Counsel for Mr. Slobodan Praljak, 13 September 2013).

<sup>8</sup> Registrar’s Submission, para. 4 & fn. 10, *referring to* Registrar’s Decision of 6 August 2014.

the Appeals Phase”, in line with the Appeals Legal Aid Policy.<sup>9</sup> The Defence’s allocation was therefore increased by 1700 counsel hours and 900 support staff hours, to a total of 2100 counsel hours and 900 support staff hours for the Appeal Phase.<sup>10</sup>

5. On 6 May 2015, the Defence requested funding from the Registry for an additional allotment of 340 hours to work on the appeal: 120 hours to prepare for the appeal hearing, 120 hours to review documents, and 100 hours to complete the Reply Brief.<sup>11</sup> On 30 September 2015, the Registry informed the Defence that, having consulted with the Appeals Chamber, additional resources would not be allocated at that time.<sup>12</sup> The Registry reasoned that the size and complexity of the case, the specific situation of the Defence, the review of prior work product, and the analysis of newly disclosed documents were not unforeseen circumstances beyond the control of the Defence or otherwise did not warrant additional funds.<sup>13</sup>

6. On 13 February 2017, the Defence requested an additional allotment of 120 hours to further prepare its case.<sup>14</sup> One week later, the Registry rendered the Impugned Decision declining to allocate additional hours to the Defence.

## II. SUBMISSIONS

7. The Defence submits that in rendering the Impugned Decision, the Registry failed to comply with legal requirements, failed to take into account all relevant material, failed to observe basic rules of natural justice, and reached an unreasonable conclusion.<sup>15</sup>

8. First, the Defence submits that the Registry failed to comply with legal requirements, arguing that upon finding that unforeseeable circumstances had not been demonstrated, the Registry “should have considered if article 17 of the Appeals [Legal Aid] Policy applies”.<sup>16</sup> It submits that this provision allows the Registrar to consider *proprio motu* whether it is necessary to adjust the

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<sup>9</sup> Registrar’s Submission, Annex 1 (Letter from the Head of OLAD to Counsel for Mr. Slobodan Praljak, 14 October 2014), p. 1 (emphasis omitted). *See also* Appeals Legal Aid Policy, Section I (defining “Appeal Phase” as “that stage of the proceedings which commences after the filing of a Notice [of Appeal] (by either party) and which ends one day following the delivery of the appeal judgement” and further clarifying that “[i]t includes the briefing period and the appeal hearing”).

<sup>10</sup> *See* Registrar’s Submission, para. 5 & Annex 1.

<sup>11</sup> *See* Defence Request for Review, Annex 5 (Letter from Lead Counsel for Mr. Slobodan Praljak to the Head of OLAD, 6 May 2015), pp. 3–4.

<sup>12</sup> Defence Request for Review, Annex 2 (Letter from the Head of OLAD to Counsel for Mr. Slobodan Praljak, 30 September 2015), p. 1.

<sup>13</sup> *See* Defence Request for Review, Annex 2, pp. 1–2.

<sup>14</sup> Defence Request for Review, Annex 3 (Letter from Counsel for Mr. Slobodan Praljak to the Head of OLAD, 13 February 2017).

<sup>15</sup> Defence Request for Review, paras 2, 5.

<sup>16</sup> Defence Request for Review, para. 8.

allocation of hours to Counsel, and is applicable to all cases.<sup>17</sup> According to the Defence, the Registry therefore erred in not considering its discretionary ability to allocate additional hours in the present case.<sup>18</sup>

9. Second, the Defence contends that the Registry failed to take into account relevant material. In particular, the Defence claims that the Registry disregarded the complexity and volume of Praljak's case, as well as that the change in Counsel after trial provoked additional work since the case was new to the Co-Counsel appointed for the appeal.<sup>19</sup> The Defence further notes the Tribunal's withdrawal of Counsel "in the middle of the preparation of the appeal brief, in July 2013" and later reassignment, arguing that this "interruption of almost one year" was unforeseeable and entailed additional work as Counsel needed to refresh their memory of the case.<sup>20</sup>

10. Third, the Defence submits that the Registry failed to observe basic rules of natural justice.<sup>21</sup> In particular, the Defence refers to the equality of arms principle set out in Article 21(1) of the Statute of the Tribunal ("Statute"), and contends that by rejecting the Defence's request for additional funds without proper consideration, the Registry put Praljak "in an unfavorable situation as the opponent party does not miss means to present its case".<sup>22</sup> The Defence further submits that it did not exhaust resources through waste, adding that all of its invoices were approved by the Registry, thus indicating that the work done was reasonable and necessary.<sup>23</sup> According to the Defence, the allocated hours are "simply not sufficient" for an effective defence in a case of such volume and complexity, and this impacts Praljak's fundamental right to a fair trial such that "the interest of justice and principles of fairness and of good sense require that additional funds be allocated".<sup>24</sup> The Defence concludes by requesting 120 hours to prepare for the appeal hearing, which in its view is "more than reasonable".<sup>25</sup>

11. Finally, the Defence asserts that the Registry reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached.<sup>26</sup>

12. The Registrar submits that the Defence has failed to demonstrate any error in the decision-making process of the Registry, and that the Defence Request for Review should therefore be denied.<sup>27</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Defence Request for Review, paras 9–11.

<sup>20</sup> Defence Request for Review, para. 10.

<sup>21</sup> Defence Request for Review, para. 16.

<sup>22</sup> Defence Request for Review, para. 12.

<sup>23</sup> Defence Request for Review, para. 13.

<sup>24</sup> Defence Request for Review, para. 14.

13. The Registrar maintains that the Impugned Decision complied with the legal requirements of the Appeals Legal Aid Policy “by applying paragraphs 14 to 16 thereof”, concerning whether the Defence had shown unforeseen circumstances beyond its control which substantially impacted the preparation reasonably required.<sup>28</sup> With regard to paragraph 17 of the Appeals Legal Aid Policy, the Registrar asserts that it “is irrelevant to a request for additional funds by Counsel” and “does not create any rights for counsel”.<sup>29</sup> The Registrar contends that the *proprio motu* power conferred by paragraph 17 of the Appeals Legal Aid Policy is “exceptional and discretionary”, and that having denied the Defence’s request pursuant to paragraphs 14 through 16, paragraph 17 became “moot”.<sup>30</sup>

14. With regard to the consideration of relevant materials, the Registrar states that the Registry took into account the Defence arguments for further hours, as well as the Registry’s decision of 30 September 2015 denying the Defence’s previous request for additional hours and the Appeals Chamber’s input provided at that time.<sup>31</sup> Having taken these into account, the Registry was not satisfied that work stemming from the complexity and size of the case was unforeseeable,<sup>32</sup> that preparation for an appeal hearing and re-familiarization with work were atypical and unforeseeable,<sup>33</sup> or that the break in Counsel’s assignment led to a substantial and unexpected increase in work.<sup>34</sup> The Registrar also notes that while the Registry reviews Counsel’s time sheets, it “does not determine [...] the most appropriate use of the resources available”, stressing that in any event “the mere exhaustion of resources, even if they were carefully managed by counsel, is not sufficient to justify the allocation of additional hours”.<sup>35</sup>

15. Finally, the Registrar submits that the Registry observed basic rules of natural justice and acted with procedural fairness toward the Defence, and reached a conclusion which was both reasonable and required under the Appeals Legal Aid Policy.<sup>36</sup> The Registrar refers to the Complexity Level 3 determination as an “exceptional ranking [awarded] to only 11 per cent of all appeal cases before the Tribunal”.<sup>37</sup> In view of this and the Defence’s underlying request, the Registrar maintains that the Impugned Decision reasonably concluded that the Defence did not

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<sup>25</sup> Defence Request for Review, para. 15.

<sup>26</sup> Defence Request for Review, paras 2, 5, 16.

<sup>27</sup> Registrar’s Submission, paras 2, 20, 31.

<sup>28</sup> Registrar’s Submission, para. 21.

<sup>29</sup> Registrar’s Submission, p. 6 & para. 22.

<sup>30</sup> Registrar’s Submission, para. 22.

<sup>31</sup> Registrar’s Submission, para. 21.

<sup>32</sup> Registrar’s Submission, para. 23.

<sup>33</sup> Registrar’s Submission, p. 7 & paras 24–26.

<sup>34</sup> Registrar’s Submission, para. 27.

<sup>35</sup> Registrar’s Submission, para. 25, *citing* Appeals Legal Aid Policy, para. 16.

<sup>36</sup> Registrar’s Submission, paras 28–30.

<sup>37</sup> Registrar’s Submission, para. 29.

“substantiate that the case warrants a departure from the highest available complexity determination and the maximum funding under the Appeals Policy”.<sup>38</sup>

### III. STANDARD OF REVIEW

16. 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.<sup>39</sup>

17. 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).<sup>40</sup>

18. 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”.<sup>41</sup>

19. 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”.<sup>42</sup> Only when both matters are shown may the administrative decision be quashed. If the accused fails to demonstrate either of these matters, the Registrar’s decision will be confirmed.<sup>43</sup>

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<sup>38</sup> *Id.*

<sup>39</sup> *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 (“*Kvočka et al.* Decision”), para. 13. *See also Prlić et al.*, Public Redacted Version of the 25 July 2013 Decision on Slobodan Praljak’s Motion for Review of the Registrar’s Decision on Means, 28 August 2013 (“Decision of 25 July 2013”), para. 6; *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 of 31 January 2012”), para. 6.

<sup>40</sup> Decision of 25 July 2013, para. 6; *Karadžić* Decision of 31 January 2012, para. 6; *Kvočka et al.* Decision, para. 13

<sup>41</sup> Decision of 25 July 2013, para. 7; *Karadžić* Decision of 31 January 2012, para. 7; *Kvočka et al.* Decision, para. 13.

<sup>42</sup> Decision of 25 July 2013, para. 7; *Karadžić* Decision of 31 January 2012, para. 7. *See Kvočka et al.* Decision, para. 14.

<sup>43</sup> *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.13, Public Redacted Version of the 25 July 2014 Decision on Appeal from Decision on Indigence, 2 December 2014, para. 5; *Kvočka et al.* Decision, para. 14.

#### IV. APPLICABLE LAW

20. Article 21(1) of the Statute pertains to the rights of an accused person, and provides that “[a]ll persons shall be equal before the International Tribunal”.

21. The Appeals Legal Aid Policy, a Registry document which “sets forth the provisions governing remuneration of Defence Counsel assigned by the Registry during the appeal stage of proceedings”,<sup>44</sup> applies to counsel who were “assigned pursuant to Rules 44, 45 or 45*ter* of the Rules”.<sup>45</sup> The policy contains the following provisions:

##### IV. Adjustment of allotment

###### A. Request for Additional Hours

- 14) If, during the Appeal Phase, Lead Counsel demonstrates the occurrence of unforeseeable circumstances beyond the control of the Defence which substantially impact the preparation reasonably required, the Registrar may allocate additional hours, while maintaining the complexity ranking of the case.
- 15) In deciding upon a request for additional hours, the Registrar may consult with the Appeals Chamber and also give consideration to the efficient use of resources by the Defence throughout the duration of the Appeal Phase.
- 16) Any additional allocation of hours must be requested and approved prior to work being performed. If authorisation was not obtained before the work was performed, the Registrar may refuse to approve payment in whole or in part. The exhaustion of resources, without more, shall not constitute a basis for a request for additional hours.

###### B. *Proprio Motu* Adjustment

- 17) In certain circumstances, after consulting with the Appeals Chamber, the Registrar may consider *proprio motu* whether it is necessary to adjust the allocation of hours to Counsel. In such circumstances, the Registrar shall consult with Counsel for their views prior to finalising this decision.

#### V. DISCUSSION

22. The Defence alleges that in rendering the Impugned Decision, the Registry failed to comply with legal requirements, failed to take into account relevant material, failed to observe basic rules of natural justice, and reached an unreasonable conclusion. For the reasons that follow, I find that the Defence has not met its burden with regard to these allegations.

23. Turning first to the legal requirements, the Defence does not appear to challenge the Registry’s reliance on paragraphs 14 to 16 of the Appeals Legal Aid Policy, but instead submits that

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<sup>44</sup> Appeals Legal Aid Policy, p. 1.

<sup>45</sup> Appeals Legal Aid Policy, Section I (defining “Counsel”).

the Impugned Decision failed to comply with legal requirements by disregarding paragraph 17.<sup>46</sup> The Registrar submits that paragraph 17 of the Appeals Legal Aid Policy is “irrelevant” to requests for additional hours by counsel and that, having denied the Defence request in line with paragraphs 14 through 16, “paragraph 17 becomes moot”.<sup>47</sup> I observe that paragraph 17 of the Appeals Legal Aid Policy pertains to the Registrar’s ability to consider *proprio motu* an adjustment of hours allotted to Defence Counsel, and I find myself unconvinced by the Registrar’s submission that his *proprio motu* power is nullified in instances where the Defence has not substantiated a request for additional hours. In my view, this argument contradicts the very nature of a *proprio motu* power.

24. Regardless of whether this *proprio motu* power needed to be borne in mind when assessing the Defence request for additional hours, the Defence has not met its burden of showing that any error in this respect significantly affected the Impugned Decision to the detriment of the Defence. The Defence offers no arguments concerning the possible impact of any such error, instead focusing solely on whether the Registry should have considered paragraph 17 of the Appeals Legal Aid Policy.<sup>48</sup> Moreover, the Registrar’s submission makes clear that, even if he had contemplated a *proprio motu* adjustment, he would not have exercised that power to allot additional hours to the Defence.<sup>49</sup> Because the Defence has not demonstrated that any non-compliance with the legal requirements significantly affected the Impugned Decision to the detriment of the Defence, the Impugned Decision cannot be quashed on the basis of this challenge.

25. The Defence further contends that the Registry failed to consider relevant material by disregarding the complexity and volume of the case as well as the particular situation of Counsel during the Appeal Phase. The Impugned Decision, however, expressly takes these factors into account.<sup>50</sup> In particular, the Impugned Decision notes that Counsel had raised the complexity and volume concerns, among other factors, in their request for additional hours in 2015, that those factors were not found deserving of additional hours at the time, that Counsel “have not brought forward any new arguments in the current request”, and that therefore the earlier reasoning remained unaffected.<sup>51</sup> The Registry further clarified that preparation for an appeal hearing does not constitute an unforeseeable circumstance beyond the control of the Defence, and that a change in Counsel would not merit the granting of additional funds.<sup>52</sup> The Defence has not identified any

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<sup>46</sup> See Defence Request for Review, paras 6–8. See also Impugned Decision, para. 3 & fn. 1 (referring to paragraphs 14 through 16 of the Appeals Legal Aid Policy).

<sup>47</sup> Registrar’s Submission, p. 6 & para. 22.

<sup>48</sup> See, e.g., Defence Request for Review, paras 6–8.

<sup>49</sup> See, e.g., Registrar’s Submission, para. 2.

<sup>50</sup> Impugned Decision, paras 4–6, 8.

<sup>51</sup> Impugned Decision, para. 5.

<sup>52</sup> Impugned Decision paras 7–8. I further note that although the Defence Request for Review alleges that the Registry failed to take into account specific details concerning the assignments of Counsel and composition of the Defence team,

error in this respect and, therefore, has not substantiated its claim that the Registry disregarded relevant material.

26. Turning to whether the Registry observed basic rules of natural justice, I note that the Defence relies on Article 21(1) of the Statute and submits that the Registry placed “Praljak in an unfavorable situation as the opponent party does not miss means to present its case”.<sup>53</sup> In this regard, I recall that Article 21(1) of the Statute provides for equality of arms between parties, and that “[i]t is well established in the jurisprudence of this Tribunal that equality of arms does not mean equality of resources, but rather that each party must have a reasonable opportunity to defend its interests under conditions which do not place him at a substantial disadvantage *vis-à-vis* his opponent”.<sup>54</sup> Aside from asserting that the opposing party – i.e. the Office of the Prosecutor – does not lack resources, the Defence fails to substantiate that it was placed at a disadvantage despite receiving the maximum funding under the Appeals Legal Aid Policy. Likewise, the Defence does not in any way support its statement that it needs additional funding to effectively represent its client. These bare assertions by the Defence are insufficient to establish that the Registry failed to observe basic rules of natural justice. Moreover, I note that the Impugned Decision reasoned that the exhaustion of resources is not, in itself, sufficient to warrant granting additional funds, and subsequently considered each of the Defence’s arguments in favour of additional funds before rejecting them in turn.<sup>55</sup>

27. Finally, the Defence asserts that the Registry reached an unreasonable conclusion, without supporting its claim except perhaps by reference to its other submissions.<sup>56</sup> As I have found those submissions to be lacking in merit and since the Defence has not otherwise specified how or why the Impugned Decision is unreasonable, I likewise dismiss the Defence’s assertion that the Impugned Decision reflects a conclusion which no sensible person who has properly applied his mind to the issue could have reached.

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the Defence did not identify these details in its request to the Registry of 13 February 2017. *See* Defence Request for Review, para. 10 & Annex 3.

<sup>53</sup> Defence Request for Review, para. 12.

<sup>54</sup> *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.9, Decision on Slobodan Praljak’s Appeal Against the Trial Chamber’s Decision of 16 May 2008 on Translation of Documents, 4 September 2008, para. 29. *See also Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 220 (stating that “the principle of equality of arms [...] does not amount to material equality between the parties in terms of financial and/or human resources”).

<sup>55</sup> Impugned Decision, paras 3–8. *See also* Appeals Legal Aid Policy, para. 16.

<sup>56</sup> *See* Defence Request for Review, paras 2, 5, 16.

**VI. DISPOSITION**

28. For the foregoing reasons, I **DISMISS** the Defence Request for Review.

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



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Judge Carmel Agius  
President

Dated this 16th day of August 2017,  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**