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**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: 25 July 2013
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 25 July 2013

PROSECUTOR

v.

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

CONFIDENTIAL AND EX PARTE

**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 a la Response du greffier depose 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

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. I note that as of the date of the filing of the Response, the Registrar requests additional reimbursement in the amount of €22,000.00 to cover expenditures granted to Praljak for the present review. 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.

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

5. On 29 May 2013, the Trial Chamber rendered the judgement in *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

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.

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.

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 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”.

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

³⁰ *Žigić* Decision, para. 14.

³¹ *Žigić* Decision, para. 14.

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 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

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.

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

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

³⁵ Motion for Review, para. 12.

³⁶ Motion for Review, para. 123.

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.

jurisprudence stating that “the more serious the consequences flowing from an Article 11 decision, 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 including the house in Kraljevac,⁵² the yacht,⁵³ the funds in the Dresdner bank account,⁵⁴ and business shares in the Oktavijan company.⁵⁵ Moreover, Praljak asserts the Registrar erroneously took into account assets that were already disclosed in the 2004 Request for Legal Aid, including the Čapljina property⁵⁶ and the Pisak property.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, he would have elected to represent himself or would have chosen to hire only one counsel to represent him.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

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.

interests of justice.⁶² In addition, Praljak contends that he would be denied the “right to defence” if 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

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.

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.

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 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 demonstrated and considerable 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,

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.

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, including the assessment of the Kraljavak property,⁸⁵ the Ilica 109 property,⁸⁶ the Čapljina property,⁸⁷ the Pisak property,⁸⁸ the yacht,⁸⁹ the Dresdner bank accounts,⁹⁰ Praljak's ownership of the Oktavijan company,⁹¹ and Praljak's income and living expenses,⁹² was reasonably made on the balance of probabilities.⁹³ According to the Registrar, Praljak repeatedly failed to disclose all of his assets and deliberately gifted or transferred assets for virtually no consideration to his family to conceal these assets.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

⁸⁴ Response, paras 63-64.

⁸⁵ See Response, paras 68-89.

⁸⁶ See Response, paras 90-108.

⁸⁷ See Response, paras 109-121.

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.

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, 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.

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

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.

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 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

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

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

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.

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 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

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.

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, 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.

¹²⁰ See Motion for Review, paras 37, 112.

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.

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 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,

¹²⁷ Interim Order, p. 1.

¹²⁸ *See supra*, para. 6.

¹²⁹ *See infra*, para. 82.

¹³⁰ Emphasis added.

¹³¹ Decision on Means, p. 7.

¹³² Response, para. 56.

¹³³ *See supra*, para. 36.

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

1. Kraljevac Properties

(a) Submissions

41. Praljak submits that the properties at Kraljevac 35/35a/37 in Zagreb (“Kraljevac properties”) should not be included in his disposable means for a number of reasons.¹³⁷ Praljak concedes that he lived at the Kraljevac properties before his arrest, that this continues to be listed as his address, and that his wife currently lives there.¹³⁸ However, Praljak submits that the property is owned by third parties and thus does not qualify as his principal home as defined in Article 4 of the Registry Policy.¹³⁹ Praljak admits that he “enjoys” part of the assets at Kraljevac, but he asserts that neither he nor anyone with whom he habitually resides enjoys the properties as owners, and none of them have the freedom to dispose of the properties.¹⁴⁰ In this regard, Praljak contends that the Registrar should have taken into account Croatian law when determining the rights Praljak has with respect to this property.¹⁴¹ Praljak also asserts, relying on the case of *Prosecutor v. Momčilo Krajišnik*,¹⁴² that the crucial question is not whether he can use the house but whether he “can sell it, rent it or mortgage it in order to secure funds needed for his defence”.¹⁴³ Finally, Praljak denies that he transferred any part of the property to his wife for the purpose of concealment and notes that the Registrar does not consider that other parts of the property are owned by third parties.¹⁴⁴ In these circumstances, Praljak submits that the Registrar should not have included the property, which was valued at €682,659, in the assessment of his assets.¹⁴⁵

42. The Registrar responds that Praljak was the owner of the Kraljevac property beginning in late 1999 until he transferred ownership to his wife pursuant to a deed of gift dated and signed on 6 February 2002 and notarized on 29 March 2004.¹⁴⁶ The Registrar submits that, according to the

¹³⁴ See *supra*, para. 35.

¹³⁵ See *supra*, para. 6.

¹³⁶ See *supra*, para. 7.

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.

Croatian land registry, Praljak's wife was never a registered owner of the property¹⁴⁷ and notes that she subsequently transferred the property to Praljak's step-son within days of receiving the deed,¹⁴⁸ thus placing the property outside the Registry's reach for purposes of determining Praljak's disposable assets.¹⁴⁹ In this context, the Registrar refers to Section 5(f) of the Registry Policy, which allows him to include transferred property as part of a legal aid applicant's disposable means if the purpose of the transfer was to remove the property from consideration.¹⁵⁰ The Registrar thus submits that, taking into account all the relevant information and on the balance of probabilities, he reasonably concluded that Praljak transferred ownership of the Kraljevac properties for the purpose of concealment.¹⁵¹

43. The Registrar further contends that Praljak's reliance on the Krajišnik Decision is inapposite because the Trial Chamber took into account a number of factors in that case which are not present in Praljak's case.¹⁵² The Registrar also submits that Praljak benefited from having the Kraljevac property designated as his principal family home since, according to the Registry Policy, the Registrar considered the value of the Kraljevac property only to the extent it exceeded the average living space for two persons in Croatia instead of considering 100% of the property's value.¹⁵³

44. In reply, Praljak maintains, *inter alia*, that the Krajišnik Decision is relevant to his situation.¹⁵⁴ More specifically, Praljak claims that, similar to Krajišnik, the actual owners of the contested properties are not under his control, and he cannot force them to sell the properties and give him the proceeds.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

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").

obligations under the Directive or otherwise to conceal or obfuscate the extent of his own assets,¹⁵⁷ which may be indicated by such factors as whether valuable assets were transferred for no consideration.¹⁵⁸ I note in this regard that Praljak transferred the Kraljevac property to his wife for no consideration, who in turn transferred the property to Praljak's step-son within two days, also for no consideration.¹⁵⁹ I further note that Praljak's wife was never registered as an owner of the property and that by transferring the property to his step-son, Praljak attempted to make the asset unavailable to the Registrar for purposes of calculating Praljak's disposable means. In these circumstances, I am of the view that the Registrar acted reasonably in concluding that the property was transferred for purposes of concealment. I further consider that while Praljak submits that he is unable to dispose of the property, the Registrar, pursuant to Section 5(f) of the Registry Policy, may nevertheless include any asset that has been transferred for the purpose of concealment as part of a legal aid applicant's disposable means.¹⁶⁰

46. Second, I find reasonable the Registrar's determination that the Kraljevac property be designated as Praljak's principal family home. 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 While Praljak claims that he does not actually own the properties, I recall that the Registrar reasonably concluded that Praljak transferred ownership of the properties for the purpose of concealment. In addition, I note that Praljak concedes that his wife resides at the property and that it continues to be his address in Croatia.¹⁶² For the foregoing reasons, I find that the Registrar acted reasonably in designating the Kraljevac properties as Praljak's principal family home and including the properties as part of his disposable means.

2. Proceeds of the Sale of the Property at Ilica 109

(a) Submissions

47. Praljak advances several contentions to support his claim that the proceeds of the sale of the property located at Ilica 109 should not have been considered part of his assets.¹⁶³ In particular, Praljak submits that he transferred the property at Ilica 90 ("Ilica property") to his wife by deed of

¹⁵⁷ See *Krajišnik* Decision, para. 22.

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.

gift and thus that, according to Croatian law, the Ilica property cannot be considered marital property.¹⁶⁴ Praljak further contends that he did not transfer the Ilica property to his wife for purposes of concealment because the transfer was concluded on 27 February 2002, before the issuance of the indictment against him.¹⁶⁵ Praljak also asserts that there is nothing to suggest that either he or his wife remains in possession of the proceeds from the sale of the Ilica property and that, in any event, the proceeds are earmarked to pay defence costs that he incurred before he was assigned Tribunal-paid counsel.¹⁶⁶

48. The Registrar responds that, on the balance of probabilities, it was reasonable to conclude that the proceeds from the sale of the Ilica property form part of Praljak's disposable means.¹⁶⁷ The Registrar submits that Praljak provided contradictory information about the property. Specifically, the Registrar notes that Praljak first claimed he transferred the property to his wife by a deed of gift, resulting in the property being considered her separate property, and then subsequently stated that he transferred the Ilica property to his wife for consideration and thus the transfer was not for the purpose of concealment.¹⁶⁸ The Registrar accepts Praljak's proposition that he gifted the property to his wife but maintains that the transfer, which was made for no consideration at a time when Praljak was under investigation and "expected to be indicted by the Tribunal", was for the purpose of concealment.¹⁶⁹

49. The Registrar also submits, *inter alia*, that Praljak made contradictory claims with respect to the proceeds from the sale of the Ilica property.¹⁷⁰ In particular, the Registrar notes Praljak's assertion that he spent the proceeds on the cost of his defence, which conflicts with his subsequent claim that the purchaser of the Ilica property did not provide him with the proceeds of the sale.¹⁷¹ Moreover, Praljak later submitted that "he did not know the disposition of the proceeds because the funds belonged to his wife".¹⁷² The Registrar further notes that Praljak has never supplied objective evidence of the payments made to counsel for his defence.¹⁷³

50. In reply, Praljak emphasizes, *inter alia*, that "[t]he only relevant question regarding the proceeds of the sale of the property at Ilica is whether [he] actually has the amount" as indicated in

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.

the Decision on Means,¹⁷⁴ and he asserts that he provided the Registrar with the necessary documentation to prove that he used the proceeds of the sale to pay his legal fees.¹⁷⁵ Praljak also submits that the Registrar could have asked the defence counsel for evidence of payment but that, in any event, the amount paid to counsel is covered by attorney-client privilege and thus can only be revealed in “special circumstances”.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 I note in this regard that Praljak appears to concede that he transferred the Ilica property to his wife for no consideration, by a deed of gift.¹⁷⁸ I further note, however, that Praljak provided contradictory information to the Registrar regarding the transfer of the Ilica property to his wife, at one point claiming that he received consideration from his wife in exchange for the property.¹⁷⁹ With respect to the timing of the transfer, I note that Praljak transferred the property when he was under investigation and is likely to have been aware that he would be indicted by the Tribunal.¹⁸⁰ In this context, I consider that the Registrar was reasonable in determining that Praljak transferred the Ilica property to his wife for the purpose of concealment and thus could be included as part of Praljak’s disposable means.

52. I further note that Praljak provided contradictory information regarding the manner in which he used the proceeds of the sale and has failed, throughout the investigation into his means, to provide objective evidence of the manner in which he claims to have used the proceeds.¹⁸¹ In view of the foregoing, I find that the Registrar acted reasonably in concluding, on the balance of probabilities, that the sale of the proceeds of the Ilica property form part of Praljak’s disposable assets.

¹⁷⁴ Reply, para. 42.

¹⁷⁵ Reply, paras 46-50.

¹⁷⁶ Reply, para. 47.

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.

3. Čapljina Property

(a) Submissions

53. Praljak does not contest that he owns the property in Čapljina, Bosnia and Herzegovina (“Čapljina property”).¹⁸² However, Praljak claims that since Article 19 of the Directive applies to the Registrar’s modification of his legal aid, the Registrar is precluded from examining assets that were already disclosed to the Registrar at the time of the Decision Assigning Counsel, including the Čaplina property.¹⁸³ More specifically, Praljak asserts that he disclosed the Čapljina property in his 2004 Request for Legal Aid, thus the Registrar should not have included the property in the “reconsideration of the [Decision Assigning Counsel]”.¹⁸⁴ Praljak submits that in any case, the Registrar should not have taken into account the Čapljina property because it has been mortgaged and its current value “is not clear”.¹⁸⁵ More specifically, Praljak contends that the Registrar should have considered the mortgage on this property and asserts that the Registrar cannot hold the fact that Praljak failed to register the mortgage in the Croatian land registry against him, given that the burden is on the lender to register a mortgage.¹⁸⁶ Praljak also submits that the Registrar cannot discard evidence of the loan repayment contract without providing solid evidence that the contract does not comport with Croatian law.¹⁸⁷ Praljak thus avers that while he owns the property, the current value is unclear and the mortgage prevents him from freely disposing of it.¹⁸⁸

54. In response, the Registrar submits that Praljak does not dispute his ownership of the Čapljina property and that the Decision on Means was based on the value set forth in Praljak’s 2004 declaration of means.¹⁸⁹ The Registrar reiterates that the Decision on Means, rather than the Decision Assigning Counsel, was the first substantive decision regarding Praljak’s eligibility for legal aid, thus it was appropriate to include the Čaplina property in determining his available means.¹⁹⁰ With regard to any encumbrance on the property, the Registrar submits that, on the balance of probabilities, the relevant information indicates that Praljak used the alleged mortgage as an attempt to minimize the value of the Čapljina property.¹⁹¹ In particular, the Registrar submits that Praljak did not meet his burden of establishing that a valid encumbrance on the property exists,

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.

noting that there is no record that the alleged mortgage was executed.¹⁹² Finally, the Registrar observes that the value assigned to the Čaplina property was originally provided by Praljak and that it was Praljak's burden to demonstrate any change in the property's value.¹⁹³

55. In reply, Praljak submits that the Registrar should not have ignored the mortgage based on its comportment with Croatian law since the alleged legal breach "may entail responsibilities for the management of the company that concluded such an agreement" rather than invalidate the agreement altogether.¹⁹⁴ However, Praljak contends that since the Registrar did not issue the Decision on Means within a reasonable period, it was the Registrar's responsibility to either carry out a new valuation of the property or at least request that Praljak provide an updated valuation.¹⁹⁵ By relying on the 2004 valuation instead, Praljak argues that the Registrar acted unreasonably.¹⁹⁶

(b) Discussion

56. I note that Praljak's submission that the Registrar should not have considered the Čaplina property is premised on Praljak's belief that the Decision Assigning Counsel was a substantive decision on his eligibility for legal aid and thus that Article 19(B) applies to the Decision on Means. 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 the Čaplina property as part of Praljak's available means and that Praljak's disclosure of the property in the 2004 Request for Legal Aid is irrelevant in this regard.

57. With regard to the alleged encumbrances on the property, I note that Praljak has failed to provide objective evidence of the existence of a mortgage on the Čaplina property.¹⁹⁸ In these circumstances, I find that the Registrar was reasonable to conclude that, on the balance of probabilities, no encumbrances on the property exist.

58. I similarly find that the Registrar was reasonable in relying on Praljak's assessment of the Čaplina property's value, estimated at €23,907, as provided in his declaration in 2004. I recall in this regard that the burden is on the applicant to "update his declaration of means at any time a

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.

¹⁹⁸ Appendix I, paras 219-222

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 but he failed to demonstrate that a change in value of the Čapljina property occurred. I thus consider that the Registrar’s inclusion of the Čapljina property as part of Praljak’s disposable means was reasonable.

4. Pisak Property

(a) Submissions

59. Praljak does not contest his ownership of the property in Pisak (“Pisak property”) and that its value was estimated at €32,644 in 2004.²⁰¹ However, Praljak claims that since he had already disclosed the Pisak property at the time of the Decision Assigning Counsel, Article 19 of the Directive precludes the Registrar from considering the property in the context of the Decision on Means.²⁰² Praljak further asserts that the Pisak property is the only property he owns in Croatia and is the only location where he and his wife “could live safely”.²⁰³ Consequently, Praljak submits that the Registrar should not have taken into account the Pisak property in Praljak’s disposable means “as it is the principal property guaranteeing a decent life to [him] and his spouse”.²⁰⁴ Finally, Praljak asserts that the current value of the Pisak property is currently unclear, noting that he has only been able to attend the property twice in the last nine years.²⁰⁵

60. In response, the Registrar submits that Praljak does not dispute his ownership of the Pisak property and that the Decision on Means reasonably relied on the value set forth in Praljak’s 2004 declaration of means.²⁰⁶ The Registrar also reiterates that it was appropriate to consider the Pisak property since the Decision on Means was the first substantive decision regarding Praljak’s eligibility for legal aid.²⁰⁷ The Registrar further maintains that the balance of probabilities indicates that Praljak and his wife remain the true owners of the Kraljevac property and that this property should be considered as the principal family home.²⁰⁸ The Registrar submits that even if the Pisak property were designated as the principal family home, this would not alter the final calculation of Praljak’s means since a reduction for the principal home was already taken into account in the

¹⁹⁹ Article 7(E) 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. Specifically, the Registrar asserts that Praljak and his wife continued to reside there without the payment of rent and Praljak continued payment of property expenses. Response, para 126.

valuation of the Kraljevac property.²⁰⁹ The Registrar also submits that the burden is on Praljak to demonstrate any change in value of the Pisak property.²¹⁰

61. In reply, Praljak asserts that since the Registrar did not establish his means within a reasonable period, the Registrar should have either conducted a new valuation of the property or requested an updated valuation from Praljak.²¹¹ Thus, according to Praljak, the Registrar was unreasonable to rely on the 2004 valuation of the property.²¹² Praljak also maintains that since the Kraljevac property does not belong to him, it should not be included as part of the assessment of disposable means, and that, accordingly, the Pisak property should be revaluated to establish its current value as his principal family home.²¹³

(b) Discussion

62. With respect to Praljak's submission that Article 19 precludes the Registrar from considering the Pisak property in the Decision on Means, 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 Pisak property in his 2004 Request for Legal Aid, and I find that the Registrar acted in accordance with the Directive when he included the property as part of Praljak's available means.

63. I also recall my finding that the Registrar reasonably designated the Kraljevac property as Praljak's principal family home,²¹⁵ and I am not persuaded by Praljak's submissions that the Pisak property should have been designated as the principal family home instead. Indeed, Praljak expressly concedes that his "current principal home [...] is in Zagreb".²¹⁶ Moreover, I note that the Registrar's assessment of Praljak's disposable means would not change whether the Pisak property or the Kraljevac property is designated as Praljak's principal family home.²¹⁷ Accordingly, I consider that the Registrar acted reasonably in concluding, on the balance of probabilities, that the Pisak property is not Praljak's principal family home.

64. I similarly find that the Registrar was reasonable to rely on the valuation of the property, estimated at 32,644 euros, as provided by Praljak in 2004. I recall in this regard that the burden is

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.

²¹⁵ See *supra*, para. 47.

²¹⁶ See Motion for Review, para. 84.

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, but he failed to demonstrate that a change in value of the Pisak property occurred.²¹⁹

5. Yacht

(a) Submissions

65. Praljak challenges the Registrar’s consideration of the yacht as part of his disposable means on two grounds. First, Praljak maintains that he legitimately transferred ownership of the yacht to a third party and thus is unable to dispose of it.²²⁰ In addition, Praljak claims that the Registrar’s estimate of the yacht’s value is outdated and is “completely arbitrary and is not based on the real value of the asset of which, in any case, [he] is not able to dispose”.²²¹

66. In response, the Registrar notes that the yacht was originally purchased in 1995 and was subsequently restored, thus increasing its value considerably.²²² Following a request by the Registrar, Praljak provided an expert appraisal which valued the yacht at €39,934.74 in 2004.²²³ The Registrar submits that Praljak gave contradicting and unsubstantiated accounts regarding his ownership of the yacht, noting, *inter alia*, that Praljak provided conflicting documentation of the purported sale of the yacht to his cousin and thus failed to provide evidence of payment for the yacht.²²⁴ Accordingly, the Registrar maintains that he was reasonable in concluding, on the balance of probabilities, that Praljak transferred the yacht for no consideration, to a family member, for the purpose of concealing the asset.²²⁵ Moreover, the Registrar considers Praljak’s admission that he expended his own funds to restore the yacht as strong evidence that he continues to act as an owner.²²⁶ Lastly, the Registrar contends that the burden rests on Praljak to prove any change in value of the yacht.²²⁷

67. Praljak replies that the only relevant issue in this case is the establishment of his current disposable means, of which the yacht does not form part.²²⁸ According to Praljak, the Registrar

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.

concedes that Praljak does not currently own the yacht, and Praljak further submits that the Registrar does not indicate how he, in the absence of any right to ownership, could dispose of the yacht and obtain the proceeds.²²⁹ Praljak also asserts that the Registrar should have revaluated the yacht or requested Praljak to do so.²³⁰

(b) Discussion

68. Turning first to the issue of concealment, 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 I note in this regard that Praljak did not provide evidence of any payment in exchange for the sale of the yacht to a third party and that the information gathered by the Registrar provides contradicting accounts of the purported sale of the yacht.²³² In these circumstances, I consider that the Registrar acted reasonably when he concluded that the yacht was transferred for the purpose of concealment. I similarly find that the Registrar was reasonable in relying on Praljak's assessment of the yacht, estimated to be worth €39,935. 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 with the opportunity to respond to the Registrar's findings on multiple occasions, but he failed to demonstrate that a change in value of the yacht occurred.²³⁴ Finally, insofar as Praljak asserts that he is currently unable to dispose of the yacht, I recall that my review of the Decision on Means is not a rehearing.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

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.

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.

6. Funds in the Dresdner Bank Accounts

(a) Submissions

69. In challenging the Registrar's assessment of the funds held at Dresdner Bank, Praljak first asserts that he could not have informed the Registrar of the bank accounts because he had no knowledge of them.²³⁸ After being notified of the accounts, Praljak submits that he adequately demonstrated that the money does not belong to him, relying in particular on a notarised statement provided by Mr. Milenko Malić ("Malić Statement").²³⁹ Praljak asserts that the Registrar's request for proof of the validity of the Malić Statement constituted an abuse of power, claiming that the request was for "proof of proof" and that the Registrar simply could have asked Mr. Malić about the truthfulness of his statement.²⁴⁰ Praljak also contends that the Registrar does not indicate what the current situation of the accounts is, where the money is at the moment or when the Registrar last checked the balance of the accounts.²⁴¹ Finally, Praljak argues that the Registrar included in Praljak's disposable means an amount that exceeds the overall balance of the accounts.²⁴²

70. The Registrar maintains that all of the relevant evidence demonstrates that, on the balance of probabilities, Praljak owns and controls the funds in the Dresdner accounts.²⁴³ In particular, the Registrar submits that in 2009, per Praljak's instruction, funds in the amount of €69,500 were transferred from the Dresdner accounts to Praljak's counsel and that Praljak's counsel, pursuant to another instruction from Praljak, subsequently transferred the funds to an undisclosed third party, later revealed to be the Praljak's step-son.²⁴⁴ According to the Registrar, Praljak nevertheless continued to claim that the funds did not belong to him and that he had no knowledge of their origin.²⁴⁵ The Registrar also notes that the Malić Statement states that Praljak's step-son transferred money in 2010 to Mr. Malić as return of funds gathered in the early 1990s for the Croatian Defense Council.²⁴⁶ However, the Registrar submits that Praljak failed to provide reliable and independent substantiation of the claims with respect to the original transfer of the funds to Mr. Malić in the 1990s and that the Malić Statement provides implausible information regarding the funds.²⁴⁷

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.

Finally, the Registrar notes that the valuation of the funds was based on information provided by Praljak's counsel.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 I note in this regard that the Registrar took into account the information contained in the Malić Statement, as well as information provided by Praljak's counsel. I further observe that the Malić Statement included information that appeared implausible in light of the fact that the amount of funds allegedly collected on behalf of the Croatian Defense Council in the 1990s was almost the same amount of the funds contained in the Dresdner accounts in 2010.²⁵⁰ In these circumstances, I find that the Registrar was reasonable in requesting that Praljak provide additional proof to corroborate the information contained in the Malić statement, and I note that Praljak failed to provide such corroboration. I thus consider that the Registrar, taking all of the relevant information into consideration, was reasonable to conclude that it was more probable than not that Praljak owned the funds and accordingly took them into account when assessing Praljak's disposable means.

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

7. Oktavijan Company

(a) Submissions

73. Praljak submits that he does not own any of the Oktavijan company's basic capital or business shares.²⁵² More specifically, Praljak submits that he authorised the Tribunal to sell, on his behalf, any shares of the Oktavijan company that belonged to him.²⁵³ Praljak contends that the Registrar has acknowledged that he transferred all of his shares to his brother in 2001, well before an indictment was issued against Praljak.²⁵⁴ In addition, Praljak contests the Registrar's valuation of the company. First, Praljak argues that the Registrar should have taken into account the valuation of

²⁴⁸ Response, para. 160.

²⁴⁹ *See supra*, para. 36.

²⁵⁰ *See* Reponse paras 157, 160.

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.

the financial agency of the Republic of Croatia when assessing the value of the Oktavijan company.²⁵⁵ Moreover, Praljak argues that since the company runs the risk of insolvency and is subject to a mortgage, the company's actual value is lower than the Registrar's estimated value.²⁵⁶

74. In response, the Registrar maintains that Praljak is the true owner of the Oktavijan company, claiming that Praljak transferred his share of the company for the purpose of concealment.²⁵⁷ According to the Registrar, Praljak was the sole shareholder of Oktavijan company until he transferred his entire share to a close family member for no consideration.²⁵⁸ The Registrar maintains that Praljak remained in control of the company, notwithstanding this transfer, and Praljak consistently failed to provide evidence to the contrary.²⁵⁹ The Registrar accordingly submits that it was reasonable to consider that the transfer of Oktavijan for no consideration to a family member was conducted for the purpose of concealment.²⁶⁰ The Registrar further asserts that, with respect to the assessment of the company's value, "all factors creating economic value in relation to Oktavijan were assessed with respect to whether they were attributable to the Accused".²⁶¹ Following this assessment, the Registrar contends that it was reasonable to determine, on the balance of probabilities, that "the personal loans [Praljak] made to Oktavijan, and the value of [Praljak]'s basic capital in Oktavijan following his transfer of a personal asset to the company for no consideration, form a part of his disposable means".²⁶²

75. Praljak replies that the Registrar did not provide any indicia that he maintained control over Oktavijan.²⁶³ Praljak also asserts that the Registrar shows a complete lack of understanding of the value of a commercial company.²⁶⁴ Lastly, Praljak contends that he provided the Registrar with sufficient information about the mortgage on the company, which thus should have been taken into account when calculating the value of Oktavijan.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

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.

consideration.²⁶⁶ I note in this regard that Praljak did not provide evidence of any payment in exchange for the sale of Oktavijan to his brother.²⁶⁷ I further note that the information before the Registrar indicates that despite the transfer to his brother, and subsequently to other close family members, Praljak continued to exercise managerial authority over the company.²⁶⁸ In these circumstances, I consider that the Registrar acted reasonably in concluding that the shares in the Oktavijan company formed part of Praljak's disposable means.

77. I also find that the Registrar was reasonable in calculating the value of Praljak's interest in the company. I note in this regard that the Registrar did in fact consider the company's risk of insolvency.²⁶⁹ I further note that the alleged mortgage relates to a part of the company that the Registrar omitted from the assessment of Praljak's disposable means.²⁷⁰ I therefore find that Praljak has not demonstrated that the Registrar came to an unreasonable determination of his assets in relation to the Oktavijan company.

8. Living Expenses

(a) Submissions

78. Praljak does not challenge the income calculated by the Registrar but submits that the Registrar erred in calculating his living expenses.²⁷¹ Specifically, Praljak contends that the Registrar incorrectly reduced the average household expenses in Croatia in order to reflect his two-member household, pointing out that some household expenses are the same irrespective of the amount of people in the household.²⁷² Moreover, the Praljak submits that the amount taken into account by the Registrar reflects the needs of an average Croatian household but fails to account for the situation where one of its members is detained in The Hague.²⁷³ According to Praljak, the sum of his household expenses should include the cost of his wife's visits to The Hague.²⁷⁴

79. The Registrar responds that Praljak's expenses were determined in accordance with Section 10 of the Registry Policy, which is applied equally to all legal aid applicants.²⁷⁵ The Registrar recognizes that Praljak's detention at the UNDU increases his living expenses, but the Registrar

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.

²⁷³ Motion for Review, para. 107.

²⁷⁴ Motion for Review, para. 107.

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

notes that the monthly allowance issued to UNDU detainees covers these costs.²⁷⁶ With regard to Praljak's wife's travel expenses, the Registrar contends that while such costs could be included in a legal aid applicant's household expenses, they were paid for by the Croatian government in Praljak's case.²⁷⁷ According to the Registrar, Praljak did not submit any information to the contrary, nor did he claim these expenses as an offset to his income in his 2004 declaration of means or during the Registrar's investigation.²⁷⁸ In any event, the Registrar asserts that the travel expenses generally considered by the Registry would not materially affect Praljak's means to pay the costs of his defence.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 I further note that Praljak has not provided any further information or proof which demonstrates that he pays for his wife's travel to The Hague. Moreover, I note the Registrar's submission that even if Praljak does pay for his wife's travel expenses, it would not materially affect the calculation of his living expenses. 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.

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.

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:

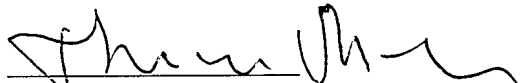
GRANT the Motion for Review in part and **REVERSE** the Decision on Means insofar as it orders Praljak to reimburse the Tribunal;

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 25th day of July 2013,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]