

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIACHURCHILLPLEIN, 1, P.O. BOX 13888
2501 EW THE HAGUE, NETHERLANDS
TELEPHONE: 31 70 512-5000
FAX: 31 70 512-8637TRIBUNAL PÉNAL INTERNATIONAL
POUR L'EX-YOUGOSLAVIECHURCHILLPLEIN, 1, B.P. 13888
2501 EW LA HAYE, PAYS-BAS
TELEPHONE: 31 70 512-5000
FAX: 31 70 512-8637

Case No. IT-04-74-A
Prosecutor v. Prlić et al.
Regarding Slobodan Praljak

PUBLIC

DECISION

THE REGISTRAR,

NOTING the Statute of the Tribunal as adopted by the Security Council under Resolution 827 (1993), as subsequently amended, and in particular Article 21 thereof;

NOTING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended (“Rules”), and in particular Rules 44, 45(E) and 45*ter* thereof;

NOTING the Code of Professional Conduct for Counsel Appearing before the International Tribunal as adopted by the Tribunal on 12 June 1997, as subsequently amended;

NOTING the Registry Policy for Determining the Extent to which a Suspect or an Accused is able to Remunerate Counsel, as applicable from 8 February 2007;

NOTING that on 5 April 2004, Mr. Slobodan Praljak (“Accused”) was transferred to the seat of the Tribunal and informed the Registry that he would not request the assignment of Tribunal-paid counsel and that he had retained Mr. Krešimir Krsnik, attorney at law from Croatia, as Counsel to represent him before the Tribunal;

CONSIDERING that on 14 June 2004, the Accused informed the Registry that he had discontinued the services of Mr. Krsnik and had engaged Mr. Božidar Kovačić and Ms. Nika Pinter, attorneys at law from Croatia, as Counsel and Co-counsel respectively, to represent him before the Tribunal;

CONSIDERING that on 13 September 2004, the Accused submitted a declaration of means to the Registrar, thereby applying for the assignment of Tribunal-paid counsel on the basis that he did not have sufficient means to remunerate counsel;

CONSIDERING that on 17 June 2005, the Registrar issued a decision denying the Accused’s request for legal aid on the basis that the Accused had not met his burden of proof to establish that he was unable to remunerate counsel,¹ and that the Registrar’s decision was reviewed and upheld by Trial Chamber I;²

¹ *Prosecutor v. Prlić et al.* (“*Prlić et al.*”), Case No. IT-04-74-PT, Decision [on Assignment of Counsel], public with confidential and *ex parte* Appendix I, 17 June 2005. See also Article 8(B) of the Directive.

² *Prlić et al.*, Case No. IT-04-74-PT, Decision on [Redacted] Request for Review of the Deputy Registrar’s Decision dated [Redacted] 2005 Regarding the Accused’s Request for Assignment of Counsel, 21 September 2005, public redacted version filed on 5 October 2005.

NOTING that on 31 October 2005, the case of the Accused was reassigned from Trial Chamber I to Trial Chamber II (“Trial Chamber”);³

CONSIDERING that the Accused then elected to conduct his own defence while requesting a reassessment of his legal aid application in parallel;⁴

CONSIDERING that on 22 December 2005, the Registrar denied the Accused’s request for a reassessment of his legal aid application, as the Accused had failed to provide previously-requested information that was necessary to complete the indigency determination;

NOTING that the Accused then applied to the Trial Chamber for the assignment of counsel “in the interests of fairness”;⁵

CONSIDERING that on 15 February 2006, the Trial Chamber issued a decision granting the Accused’s request and ordered the Registrar to assign counsel in the interests of justice, while ordering the Accused to answer 23 questions in relation to his financial status as “[...] 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”;⁶

CONSIDERING that on 6 March 2006, the Registrar assigned Mr. Božidar Kovačić and Ms. Nika Pinter, Attorneys at Law from Croatia, as Tribunal-paid Counsel and Co-counsel to the Accused, respectively, in accordance with the Trial Chamber’s decision, while noting that the Accused had not yet met his burden of establishing his legal aid eligibility and that the Registrar’s determination on the Accused’s legal aid eligibility remained outstanding;⁷

CONSIDERING that following the decision of 6 March 2006, the Accused’s defence team began receiving full legal aid allotments, without prejudice to Rule 45(E) of the Rules;

NOTING that on 11 April 2011, Ms. Nika Pinter was re-assigned as Lead Counsel to the Accused and Mr. Kovačić as Co-counsel;⁸

NOTING that on 9 May 2011, Ms. Pinter requested (i) the withdrawal of Mr. Kovačić as Co-counsel and his re-assignment as Legal Consultant, and (ii) the assignment of Ms. Nataša Fauveau-Ivanović, Attorney at Law from France, as replacement Co-counsel;

NOTING that on 26 May 2011, Ms. Nataša Fauveau-Ivanović was assigned as Co-counsel to Ms. Pinter;⁹

CONSIDERING that on 22 August 2012, the Registrar issued a decision finding, *inter alia*, that the Accused was able to fully remunerate the costs of his defence and was therefore ineligible for the assignment of Tribunal-paid counsel, and accordingly “[...] withdraw[ing] the assignment of

³ Prlić *et al.*, Case No. IT-04-74-PT, Order Reassigning a Case to a Trial Chamber, public, 31 October 2005.

⁴ Prlić *et al.*, Case No. IT-04-74-PT, Deputy Registrar’s Notification, 3 November 2005. The Accused requested reassessment by way of a letter sent to the Registry on 15 November 2005.

⁵ 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 Assignment of Defence Counsel, public, 12 January 2006.

⁶ Prlić *et al.*, Case No. IT-04-74-PT, Decision on Assignment of Defence Counsel, public with confidential Annex, 15 February 2006, para. 12.

⁷ Prlić *et al.*, Case No. IT-04-74-PT, Decision [Assigning Defence Counsel], public, 6 March 2006.

⁸ Prlić *et al.*, Case No. IT-04-74-T, Decision [Assigning Defence Counsel], public, 11 April 2011.

⁹ Prlić *et al.*, Case No. IT-04-74-T, Decision [Assigning Defence Counsel], public, 26 May 2011.

[the Accused's] counsel as of the date on which the Trial Chamber renders its judgement" ("Decision on Means");¹⁰

CONSIDERING that on 18 January 2013, the Accused filed a confidential and *ex parte* request for review of the Decision on Means ("Motion for Review");¹¹

CONSIDERING that on 24 January 2013, the Trial Chamber referred the Motion for Review and related issues to the President of the Tribunal;¹²

CONSIDERING that on 29 May 2013, the Trial Chamber rendered its judgement in *Prlić et al.*, sentencing the Accused to 20 years of imprisonment;¹³

CONSIDERING that on 29 May 2013, the President issued an interim order staying the withdrawal of counsel, pending resolution of the Motion for Review ("Interim Order");¹⁴

NOTING that on 28 June 2013, the Accused filed a notice of appeal against the trial judgement;¹⁵

CONSIDERING that on 25 July 2013, the President issued his decision on the Motion for Review;¹⁶

CONSIDERING that the President (i) denied the Motion for Review in all respects save for the order for reimbursement, (ii) found that the Registrar was reasonable in determining that the Accused was able to remunerate counsel, and consequently (iii) found the Accused's claim that it was against the interests of justice to deny him counsel to be without merit;¹⁷

CONSIDERING that the Registrar discontinued legal aid payments to the Accused's defence team effective 26 July 2013;

CONSIDERING that on 27 August 2013, the Accused executed a power of attorney in favour of Ms. Pinter and Ms. Fauveau-Ivanović to enable them to continue to represent him in proceedings before the Tribunal;

NOTING that on 2 October 2013, the Registrar admitted Ms. Nika Pinter and Ms. Nataša Fauveau-Ivanović as privately-retained Counsel to the Accused pursuant to Rule 44(A) of the Rules;¹⁸

CONSIDERING that a request for further review of the President's Decision was denied on 7 October 2013;¹⁹

¹⁰ *Prlić et al.*, Case No. IT-04-74-T, Decision [of the Registrar], public with confidential and *ex parte* Appendix I and public Appendix II, 22 August 2012, page 6.

¹¹ As cited in: *Prlić et al.*, Case No. IT-04-74-A, 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 ("President's Decision"), para. 4. The translation of the Motion for Review was filed on 22 January 2013.

¹² As cited in: President's Decision, para. 4.

¹³ *Prlić et al.*, Case No. IT-04-74-T, Judgement, public, 29 May 2013.

¹⁴ As cited in: President's Decision, para. 5.

¹⁵ *Prlić et al.*, Case No. IT-04-74-A, Slobodan Praljak's Notice of Appeal, public, 28 June 2013. See also: Corrigendum to Slobodan Praljak's Notice of Appeal, public, 29 July 2013.

¹⁶ President's Decision.

¹⁷ President's Decision, paras. 38 and 83.

¹⁸ Following an exchange of correspondence with the Registry on 28 August 2013, 2 September 2013 and 25 September 2013. *Prlić et al.*, Case No. IT-04-74-PT, Decision [Admitting Defence Counsel and Co-Counsel], public, 2 October 2013.

CONSIDERING that on 4 October 2013, the Accused requested, *inter alia*, the assignment of Tribunal-paid counsel pursuant to Article 21(4)(d) of the Statute and Rule 45ter of the Rules;²⁰

CONSIDERING that on 4 April 2014, the Appeals Chamber denied, *inter alia*, the Accused's motion for assignment of counsel in the interests of justice, finding that the Accused was "represented by Counsel, privately-retained and of his own choosing", and that consequently Rule 45ter was not applicable;²¹

CONSIDERING that the Appeals Chamber further found that "even if [the Accused] would conduct his own defence, thus claiming eligibility for Tribunal-assigned counsel under Rule 45ter of the Rules, he would still not be entitled to legal aid" and since he had been found to have disposable means to remunerate counsel, "there [would] be no violation of [the Accused's] rights if he is required to pay the cost of his legal representation";²²

CONSIDERING that, in his letter of 28 April 2014, the Accused *inter alia* notified the President of his decision to withdraw the power-of-attorney from his privately-retained Counsel, Ms. Pinter and Ms. Fauveau-Ivanović, and to represent himself in the appellate proceedings, and requested a stay of proceedings;²³

CONSIDERING that on 27 June 2014, the Appeals Chamber responded to the letter submitted by the Accused on 28 April 2014, and instructed the Registrar, *proprio motu* and pursuant to Rule 45ter of the Rules, to "assign counsel to the Accused in the interests of justice";²⁴

CONSIDERING that the Decision of 27 June 2014 requires counsel to be remunerated by the Tribunal, and that it is within the Registrar's discretion to take guidance from certain provisions of the Directive on Assignment of Defence Counsel as adopted by the Tribunal on 8 July 1994, as subsequently amended;²⁵

RECALLING that in the Decision of 27 June 2014 the Appeals Chamber ordered that the Accused "reimburse the Tribunal for the costs sustained in providing him with legal aid in connection with his appeal proceedings";²⁶

¹⁹ *Prlić et al.*, Case No. IT-04-74-A, Decision on Slobodan Praljak's Request for Further Review, public, 7 October 2013, p. 2.

²⁰ *Prlić et al.*, Case No. IT-04-74-A, Slobodan Praljak's Motion for Assignment of Counsel in the Interest of Justice, public with public and confidential Annexes, 4 October 2013, para. 27.

²¹ *Prlić et al.*, Case No. IT-04-74-A, Decision of Praljak's Motions for Stay of Procedure and Assignment of Counsel in the Interests of Justice, public, 4 April 2014, paras. 19 and 20. See also: *Prlić et al.*, Case No. IT-04-74-A, Slobodan Praljak's Urgent Motion for Stay of Procedure with Confidential Annexes, public with confidential Annexes, 3 October 2013 and *Prlić et al.*, Case No. IT-04-74-A, Slobodan Praljak's Motion for Assignment of Counsel in the Interest of Justice, public with confidential Annexes, 4 October 2013.

²² *Prlić et al.*, Case No. IT-04-74-A, Decision of Praljak's Motions for Stay of Procedure and Assignment of Counsel in the Interests of Justice, public, 4 April 2014, para. 20.

²³ Letter of the Accused dated 28 April 2014, initially filed confidential *ex parte*. The Pre-Appeal Judge in this case instructed the Registrar on 21 May 2014 to lift the confidential *ex parte* status. *Prlić et al.*, Case No. IT-04-74-A, Order Lifting Confidential and *Ex Parte* Status of Letter from Slobodan Praljak, public, 21 May 2014.

²⁴ *Prlić et al.*, Case No. IT-04-74-A, Decision on Praljak's Request for Stay of Proceedings, public, 27 June 2014 ("Decision of 27 June 2014"), at paras. 16, 18.

²⁵ See *Prosecutor v Radovan Karadžić*, Case No. IT-95-5/18-AR73.6, Decision on Radovan Karadžić's Appeal from Decision on Motion to Vacate Appointment of Richard Harvey, public, 12 February 2010, paras. 28-29.

²⁶ Decision of 27 June 2014, paras. 17-18.

RECALLING that on 13 May 2014, the Appeals Chamber issued its Order on the Registrar's Application Pursuant to Rule 45(E) of the Rules, ordering the Accused to reimburse the Tribunal for costs it sustained in providing him with legal aid in the amount of €2,807,611.10;²⁷

NOTING that the Accused informed the Registry in writing of his preference for his former Counsel and Co-counsel, Ms. Pinter and Ms. Fauveau-Ivanović, to be re-engaged in the appellate proceedings before the Tribunal pursuant to the Decision of 27 June 2014;

CONSIDERING that Ms. Pinter and Ms. Fauveau-Ivanović meet the qualifications under Rules 44 and 45 and, and have agreed to be assigned as Counsel and Co-counsel respectively;²⁸

HEREBY DECIDES pursuant to the Appeals Chamber's Decision of 27 June 2014, and without prejudice to Rule 45(E) of the Rules and the order for reimbursement contained in the Decision of 27 June 2014, to assign Ms. Nika Pinter as Counsel to the Accused, and Ms. Nataša Fauveau-Ivanović as Co-counsel to Ms. Pinter, effective as of the date of this Decision.



Dated this 6th day of August 2014
At The Hague,
The Netherlands.

²⁷ *Prlić et al.*, Case No. IT-04-74-A, Order on the Registrar's Application Pursuant to Rule 45(E) of the Rules, public, 13 May 2014, para. 24. See also: *Prlić et al.*, Case No. IT-04-74-A, Registrar's Application for the Recovery of Legal Aid Funds, public with confidential and *ex parte* Annex, 20 January 2014.

²⁸ Following an exchange of correspondence with the Registry on 15, 16 and 23 July 2014.