



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

Case No. IT-04-74-T
Date: 8 May 2013
Original: English

BEFORE THE TRIAL CHAMBER

Before: Judge Jean-Claude Antonetti, Presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Judge Antoine Kesia-Mbe Mindua, Reserve Judge
Registrar: Mr. John Hocking
Decision of: 8 May 2013

PROSECUTOR

v.

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

PUBLIC

**PUBLIC REDACTED VERSION OF "DECISION ON
[REDACTED] MOTION FOR REVIEW OF THE DEPUTY
REGISTRAR'S DECISION DATED [REDACTED] RELATED
TO THE CONTRIBUTION OF THE ACCUSED TO THE COSTS
OF HIS DEFENCE"**

The Deputy Registrar:

Counsel for the Accused:

[REDACTED]

1. Procedural History

1. This Chamber is seized with [REDACTED] (Request for Review), [REDACTED]. [REDACTED].¹
2. On [REDACTED] the Deputy Registrar filed a Decision (“Registry Decision”) assessing the Accused’s contribution at [REDACTED], thus finding him partially indigent. The Request for Review challenges this calculated amount. On [REDACTED] the Registry filed a [REDACTED] (“Registry Submission”).

2. Duty of the Accused

3. The details concerning the provision of legal aid are to be found in Article 21 of the Tribunal’s Statute, and Rule 45(A) of the Rules of Procedure and Evidence (“the Rules”), as well as the associated Directive on Assignment of Defence Counsel.² In order to be granted legal aid, the burden of proof is on the Accused to establish that he or she cannot remunerate counsel, as per Article 8 of the Directive, which states:

Article 8

- A. A suspect or accused who requests the assignment of counsel must produce evidence that he is unable to remunerate counsel.
- B. In order to determine whether the suspect or accused is unable to remunerate counsel, there shall be taken into account means of all kinds of which he has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the spouse of a suspect or Accused, as well as those of persons with whom he habitually resides, provided that it is reasonable to take such means into account.
- C. Account may also be taken of the apparent lifestyle of a suspect or accused, and of his enjoyment of any property, movable or immovable, and whether or not he derives income from it.

¹ [REDACTED].

² Article 6 of the Directive explains the condition for the entitlement to counsel fully paid for by the Tribunal.

4. Article 7 of the Directive requires a suspect or Accused requesting the Assignment of Counsel to make a declaration of means on the form provided by the Registry, and the Registrar is able to inquire into the means of the Accused as outlined as follows :

Article 10

- A. For the purposes of establishing whether the suspect or Accused satisfies the requisite conditions for assignment of counsel, the Registrar may inquire into his means, request the gathering of information, hear the suspect or Accused, consider any representation, or request the production of any documents likely to verify the request.
- B. In executing this stipulation and even after counsel has been assigned, the Registrar shall be authorised to request any relevant information at any time from any person who appears to be able to supply relevant information.

3. Accused's Financial Circumstances

5. The Registry has determined that the Accused is partially indigent, and that he will have to contribute a sum of [REDACTED] to the costs of his defence. The Registry has come to this decision after making inquiries into the living circumstances of the Accused, and the assets he has an interest in. The formula that the Registry has applied is well set out in the Registry Decision. In essence, the Registry applies the formula set out in section 11 of the Registry Policy for Determining the Extent to Which an Accused is Able to Remunerate Counsel ("Registry Policy") which reads:

$$DM - ELE = C$$

Where:

DM represents an applicant's disposable means as calculated under Sections 5 – 8 of the Registry Policy

ELE represents the estimated living expenses of an applicant, his spouse, his dependants and the persons with whom he habitually resides as calculated under Section 10 of the Registry Policy

C represents the contribution to be made by an applicant to his defence.³

There are two aspects to the Registry's decision that the Accused challenges. The Accused disputes the Registry's findings in relation to the disposable means of the Accused, as well as his estimated living expenses.

6. Disposable Means

The Registry Policy defines disposable means ("DM") as being 'income and assets of the applicant, his spouse and the persons with whom he habitually resides that in the opinion of the Registry exceed the reasonable needs of the applicant, his spouse, his dependents and the persons with whom he habitually resides'.⁴ The manner in which the Registry calculates the DM of an Accused is set out clearly in sections 5 – 8 of the Policy. The Registry has come to the conclusion in this case that the DM of the Accused shall include:

- a) [REDACTED],
- b) [REDACTED]⁵
- c) [REDACTED],
- d) [REDACTED]
- e) [REDACTED],
- f) [REDACTED],

7. The following assets are not deemed by the Registry to form part of the DM of the Accused:

- a) [REDACTED],
- b) [REDACTED],
- c) [REDACTED].

8. The Accused responded to the Registry Decision by stating that [REDACTED].⁶
[REDACTED].⁷ [REDACTED].⁸

³ [REDACTED].

⁴ Registry Policy, page 2.

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

9. Estimated Living Expenses

The Registry calculated the estimated living expenses (“ELE”) [REDACTED] according to the formula in Section 10 of the Registry Policy, which is not repeated here. The Policy further defines ELE as “the living costs likely to be incurred by the applicant, his spouse, his dependents and the persons with whom he habitually resides during the period from when the Registry issues its decision on the extent to which an applicant is able to remunerate counsel until the conclusion of the estimated period in which the applicant will require representation before the International Tribunal at the pre-trial, trial or appeals stage”.⁹

10. The Accused disputes [REDACTED].¹⁰ [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³

11. In its Submission, the Registry asserts that [REDACTED].¹⁴ [REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷

4. Legal Issues

12. The issue to be determined by this Chamber is whether the Registry was reasonable in its initial decision that the Accused is partially indigent. According to this Tribunal, a “Judicial review of [the Registry’s decision] is not a rehearing. Nor is it an appeal”.¹⁸ The Appeals Chamber elaborated on the standard of judicial review of an administrative decision made by the Registrar is made. The administrative decision will be quashed if the Registrar has:

- a) failed to comply with the legal requirements of the Directive,

⁸ [REDACTED].

⁹ Registry Policy page 2 and also see section 10.

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ *Prosecutor v Kvočka et al*, “Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Žigić”, 7 February 2003, para 13.

- b) failed to observe procedural fairness towards the Accused,
- c) taken into account irrelevant material or failed to take into account relevant material, and
- d) If he has reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the “unreasonable” test).¹⁹

13. Fairness and Legal Requirements

In view of the foregoing, and in light of the submissions by the Registry and the Accused, the Chamber finds no unfairness in the procedure. Neither does the Chamber find that the Registry has failed to comply with the legal requirement of Article 21 of the Statute, or Rule 45. With regard to DM, a declaration of means was filled out by the Accused, and there was correspondence between the Accused and the Registry, in which the Registry asked the Accused to provide information regarding recent ownership of assets.²⁰ The Registry has been fair in that it has decided that [REDACTED].²¹ The Registry has also been fair in that it has taken into consideration the reduced value of the [REDACTED], as well as the added expense of [REDACTED]. Furthermore, the Chamber is confident that the Registry will take into account any further expenses in relation to the [REDACTED].

14. In relation to the Accused’s ELE, based on the average expenditure of a [REDACTED] family, the Registry has applied the formula as set out in the Registry Policy, utilising official documentation provided by the [REDACTED].²² This information is recalculated and updated every month. The Registry is under no obligation to deviate from the standard they have been relying upon, based upon these official statistics.

15. Irrelevant and Relevant Material

The Chamber also needs to consider whether the Registry has sought to rely on irrelevant material, or has overlooked relevant material in reaching its decision. It

¹⁹ Ibid.

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

appears that the Registrar is of the opinion that, in order to assess the present financial situation of the Accused, not only the documentation regarding the Accused's present situation is relevant, but also evidence regarding recent events which may have had a non-negligible impact on the Accused's present financial situation. The information provided by the Accused shows that he disposed of [REDACTED]. The disposal of these assets was by way of gift, a matter of days before [REDACTED]. The timing, [REDACTED].²³

16. The motive of the transfer of assets is not a determining factor when considering the financial status of the Accused. For the purposes of the legal aid scheme and the assessment of indigency, the concept of concealing should not be understood too narrowly, to mean only that an asset is concealed when it becomes untraceable. A visible transfer of assets into the hands of someone the Accused considers immune from the Registry's claims, and for no consideration, falls well within the meaning of concealing. In this present context, regarding the DM of the Accused, [REDACTED].²⁴ [REDACTED].²⁵ [REDACTED]. Nonetheless, this has no bearing on the decision of this Chamber. The Registry, through the Registry Policy, has properly protected the interests of dependents who would be deprived of their basic needs due to any obligation of the Accused to contribute to the costs of his own defence. The ignoring of the transfer of considerable assets [REDACTED] would undermine the legal aid scheme, at the expense of the international community, as well as the victims of the crimes charged, and would result in an unjustifiable favouring of the relatives of the Accused. In effect, the Accused would be creating a situation for himself of self-imposed indigency at the expense of the finance of the international community.

17. Reasonableness

After considering the submissions by the Accused and the Registry, the Chamber considers that the conclusion the Registry has come to is not one no reasonable person could have reached. For all of the above reasons, the Accused has been unsuccessful in the review which he sought.

²³ [REDACTED].

²⁴ [REDACTED].


²⁵ [REDACTED].

Disposition

The Chamber rejects the Accused's Request for Review of the Deputy Registrar's Decision.

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

Dated this 8th day of May 2013
At The Hague, The Netherlands



Judge Jean-Claude Antonetti
Presiding

[Seal of the Tribunal]