



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-95-5/18-T
Date: 3 December 2014
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 3 December 2014

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**PUBLIC REDACTED VERSION OF DECISION ON
ACCUSED'S REQUEST FOR REVIEW OF REGISTRAR'S DECISION ON INDIGENCE
ISSUED ON 25 FEBRUARY 2014**

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seised of the Accused’s “Request for Review of Indigence Decision” filed confidentially and *ex parte* on 7 November 2012 (“Request”), and hereby issues its decision thereon.

I. BACKGROUND AND SUBMISSIONS

1. Having elected to represent himself, the Accused submitted a declaration of financial means to the Tribunal’s Registry on 29 September 2008 (“Declaration of Means”), in which he applied for funding for his defence as a self-represented accused on the basis that he did not have sufficient means to pay his defence team.¹
2. Until 2012, and in line with Article 9 of the Directive on the Assignment of Defence Counsel (“Directive”),² the Registrar conducted an investigation into the Accused’s financial means during the course of which it interviewed the Accused and his family, contacted and obtained information from the relevant authorities, and performed an on-site investigation.³
3. On 2 March 2012, the Registrar sent the Accused a letter informing him of the outcome of the inquiry into his financial status⁴ and preliminary determination in relation thereto, as well as giving him the opportunity to comment and provide additional documentation in support if he disagreed with the Registrar’s findings (“Registrar’s Letter”).⁵
4. On 11 April 2012, the Accused responded to the Registrar’s Letter by providing documentation and reasons in support of his claim that he did not have any disposable means to contribute to the costs of his defence (“Response Letter”).⁶
5. On 11 October 2012, the Registrar issued the decision on the Accused’s financial means (“Impugned Decision”), deciding that the Accused shall contribute 146,501 euro to the cost of his

¹ Request, para. 2; Confidential Annex A.

² Directive on the Assignment of Defence Counsel (Directive No. 1/94) (IT/73/Rev. 11).

³ See Registrar’s Submission Regarding Radovan Karadžić’s Request for Review of Indigence Decision, confidential and *ex parte*, 29 November 2012, paras. 5–12, which was re-filed on 30 November 2012 (*see* Notice of Re-Filing of Registrar’s Submission Regarding Radovan Karadžić’s Request for Review of Indigence Decision).

⁴ The Registrar considered the Accused’s assets, liquid means, liabilities, and estimated living expenses. See Request, Confidential Annex B.

⁵ Request, para. 3; Confidential Annex B.

⁶ Request, para. 4; Confidential Annex C.

defence before the Tribunal.⁷ The Registrar further decided that this contribution will be deducted from future allotments issued to the Accused's defence team, in a manner to be agreed upon by the Registrar and the Accused.⁸

6. On 7 November 2012, the Accused filed the Request pursuant to Article 13(B) of the Directive. In the Request, the Accused asks the Chamber to quash the Impugned Decision, arguing that the Registrar erroneously: (i) failed to consider the effect of two outstanding judgements against him in the United States ("U.S.") and France; (ii) considered assets which he does not own; (iii) concluded that those assets are readily disposable; (iv) overvalued those assets; (v) unreasonably delayed issuing his decision until his defence case was underway; and (vi) failed to consider other means of ensuring his contribution to his defence without disrupting the trial process.⁹

7. The Registrar filed the "Registrar's Submission Regarding Radovan Karadžić's Request for Review of Indigence Decision" on 30 November 2012 ("Rule 33(B) Submission").¹⁰ In his submission, the Registrar responds that he correctly assessed the Accused's ability to contribute towards the cost of his defence and that the conclusions set out in the Impugned Decision are reasonable.¹¹ The Registrar submits that the Chamber should dismiss the Request in its entirety.¹²

8. The details of the specific submissions of the Accused and the Registrar will be addressed below.

II. STANDARD OF REVIEW

9. Article 13(B) of the Directive provides a Chamber may review a decision of the Registrar on the partial indigence of an accused. The jurisprudence of the Tribunal has established the standard of review for a first judicial review of an administrative decision made by the Registry as follows:

A judicial review of such 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 judgement in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar in relation to legal aid

⁷ Registrar's Decision with public Appendix I and confidential and *ex parte* Appendix II, 11 October 2012 ("Impugned Decision"), p. 4.

⁸ Impugned Decision, p. 4.

⁹ Request, paras. 1, 17, 64. *See* Request, paras. 20–63.

¹⁰ *See supra* footnote 3.

¹¹ Rule 33(B) Submission, paras. 24–31, 33–37, 39–43, 45–51, 53–57, 59–79, 81–83, 85–91, 93–95, 97–106.

¹² Rule 33(B) Submission, para. 107.

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.¹³

10. An administrative decision by the Registrar may be quashed where he: (i) failed to comply with the legal requirements of the Directive; (ii) failed to observe basic rules of natural justice or to act with procedural fairness towards the person affected by the decision; (iii) took into account irrelevant material or failed to take into account relevant material; or (iv) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the “unreasonableness test”).¹⁴ Where an indigency determination of the Registrar has been challenged, it is the party contesting the decision that bears the burden of proof to demonstrate that both an error of the nature described has occurred and such an error has significantly affected the administrative decision to his detriment.¹⁵ An administrative decision will only be quashed where both matters are demonstrated.¹⁶ A Chamber will not interfere with the margin of appreciation of the facts or merits of that case to which the decision-maker is entitled unless the “unreasonableness” of an administrative decision has been established.¹⁷

III. DISCUSSION

11. In the Request, the Accused challenges the manner in which the Registrar calculated his contribution to the costs of his defence. For the sake of clarity, the Chamber will address the Accused’s specific submissions in relation to: (i) the determination of his disposable means; (ii) the option of reassigning his assets; and (iii) the alleged delay in issuing the Impugned Decision.

¹³ *Prosecutor v. Tolimir*, Case No. IT-05-88/2-AR73.2, Public Redacted Decision on Zdravko Tolimir’s Appeal Against the Decision of Trial Chamber II on the Registrar’s Decision Concerning Legal Aid, 12 November 2009 (“*Tolimir* Appeal Decision”), para. 8 (the public redacted version was filed by the Registrar on 27 February 2013 in accordance with a confidential and *ex parte* decision of the Appeals Chamber on 15 February 2013); *Prosecutor v. Karadžić*, Case No. IT-95-5/18-AR73.2, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on Adequate Facilities, 7 May 2009 (“*Karadžić* Appeal Decision”), para. 10; *Prosecutor v. 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* 2004 Decision”), para. 16; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30-1/A, Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 (“*Kvočka et al.* Appeal Decision”), para. 13; *Prosecutor v. Šljivančanin*, Case No. IT-95-13/1-PT, Decision on Assignment of Defence Counsel, 20 August 2003 (“*Šljivančanin* Decision”), para. 22. In addition, the Registrar’s inquiry into the means of the Accused pursuant to Article 10(A) of the Directive is an administrative fact-finding procedure. See *Kvočka et al.* Appeal Decision, para. 12.

¹⁴ *Tolimir* Appeal Decision, para. 8; *Kvočka et al.* Appeal Decision, para. 13; *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007 (“*Krajišnik* Appeal Decision”), para. 30; *Karadžić* Appeal Decision, para. 10; *Prosecutor v. Mrkšić*, Case No. IT-95-13/1-PT, Decision on Defence Request for Review of the Registrar’s Decision on Partial Indigence of Mrkšić, 9 March 2004, p. 3.

¹⁵ *Tolimir* Appeal Decision, para. 9; *Kvočka et al.* Appeal Decision, para. 14; *Karadžić* Appeal Decision, para. 10.

¹⁶ *Tolimir* Appeal Decision, para. 9; *Kvočka et al.* Appeal Decision, para. 14.

¹⁷ *Tolimir* Appeal Decision, para. 8; *Karadžić* Appeal Decision, para. 10; *Krajišnik* Appeal Decision, para. 30; *Kvočka et al.* Appeal Decision, para. 13. See *Šljivančanin* Decision, para. 22.

A. Alleged errors relating to the Accused's disposable means

12. In determining the disposable means of the Accused, the Registrar took into account, *inter alia*,¹⁸ the Accused's principal family home in [REDACTED] Republika Srpska ([REDACTED] and "RS", respectively) and his spouse's share of the interest in the [REDACTED] (collectively, "Properties").¹⁹ Concluding that the Properties constituted joint marital assets, the Registrar included the equity in the [REDACTED] Property exceeding the reasonable needs of the Accused and his spouse, as well as the equity in the [REDACTED], in the Accused's disposable means, notwithstanding that the Properties were transferred to [REDACTED] during the course of the Article 9 inquiry.²⁰ The Registrar also included the pension income of the Accused's spouse and a portion of monies in the Accused's account at the United Nations Detention Unit ("UNDU Account").²¹ The Registrar did not however include any liabilities in the Accused's disposable means.²²

13. The Chamber will address in turn the alleged errors raised by the Accused in relation to the Registrar's inclusion of these assets in his disposable means, the valuation of these assets, as well as the Accused's assertion that the Registrar erroneously failed to consider liabilities arising out of two foreign judgements issued against him in the U.S. and France.

1. Alleged errors in relation to the joint marital property of the Accused and his spouse

14. The Accused submits that the Registry Policy for Determining the Extent to which an Accused is Able to Remunerate Counsel ("Registry Policy"), which allows for the inclusion of the full value of marital assets in the calculation of an accused person's disposable means "violates Bosnian marital property law by aggregating marital assets and holding one spouse liable for the debts of the other".²³ The Accused contends that the Registrar failed to consider that only half of the marital property (*i.e.* his share of the marital assets) can be used to pay his defence costs under the Family Law of the RS.²⁴ He also submits that the Properties cannot be disposed of without the consent of his spouse and that she "does not consent to the disposition of any joint property to pay

¹⁸ The Registrar also considered the properties [REDACTED] but did not include these assets in the Accused's disposable means. See Impugned Decision, Appendix II, confidential and *ex parte*, paras. 18–20, 45–51, 65–66, 67–69.

¹⁹ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 31, 37, 59, 64. The Accused's spouse owns 50% of the shares of [REDACTED]. Impugned Decision, Appendix II, confidential and *ex parte*, para. 52.

²⁰ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 34–37, 43, 62–64.

²¹ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 71–74, 78–82.

²² Impugned Decision, Appendix II, confidential and *ex parte*, para. 95.

²³ Request, para. 33.

²⁴ Request, paras. 35–36, referring to Article 272(1) of the Family Law of the RS, *Denisova and Moiseyeva v. Russia*, Case No. 16903/03, [2010] ECHR 439, 1 April 2010 ("*Denisova and Moiseyeva v. Russia*").

[the Accused's] defence costs".²⁵ Further, in relation to the [REDACTED] Property, the Accused submits that the Registrar unreasonably rejected statements that the [REDACTED] Property was purchased by his spouse with inheritance money she received from her father and was intended "solely for her".²⁶ The Accused argues that the Registrar ignored the applicable provisions of the Family Law of the RS and therefore erroneously concluded that the [REDACTED] Property was marital property.²⁷

15. The Registrar first responds that he reasonably included the entire value of the Properties in the Accused's disposable means pursuant to Article 10(A) of the Directive and in accordance with the Family Law of the RS.²⁸ Second, the Registrar responds that the [REDACTED] Property was correctly considered as the joint marital property of the Accused in light of the circumstances and under the Family Law of the RS.²⁹ Therefore, the [REDACTED] Property was appropriately included as a part of the Accused's disposable means.³⁰

16. The Chamber notes that pursuant to Article 10(A) of the Directive, the Registrar shall take into "account means of all kinds" of both an accused and his spouse when determining the extent to which an accused is able to remunerate counsel. Under the Registry Policy, such means include, *inter alia*: (i) the equity in the principal family home of the accused and his spouse exceeding their reasonable needs; and (ii) the equity in assets acquired during the course of their marriage (*i.e.* marital property), unless the marital property was acquired by way of a gift made exclusively to one spouse.³¹ As such, the equity in marital property jointly owned by an accused and his spouse (and exceeding their reasonable needs in relation to the principal family home) is to be considered when calculating an accused's disposable means, while the equity in assets owned by an accused's spouse that do not constitute marital property is to be excluded.³² Whether assets constitute joint marital property, however, is to be determined in accordance with the marital property regime of the state in which the accused and his spouse were wed or reside.³³

17. In concluding that the Properties were joint marital assets, the Registrar considered that the Properties constituted marital property jointly owned by the Accused and his spouse under the

²⁵ Request, paras. 33–34, referring to Article 271(1) and (2) of the Family Law of the RS.

²⁶ Request, para. 51.

²⁷ Request, paras. 51–56.

²⁸ Rule 33(B) Submission, paras. 60, 62, 66.

²⁹ Rule 33(B) Submission, paras. 45, 47.

³⁰ Rule 33(B) Submission, para. 47.

³¹ Registry Policy, Sections 4, 5.

³² *See Tolimir* Appeal Decision, para. 24.

³³ Registry Policy, Section 6(e).

relevant marital property regime in Bosnia and Herzegovina (“BiH”).³⁴ In particular, the Registrar correctly considered that Article 270(5) and (6) of the Family Law of the RS establishes joint property as property acquired by a spouse through work during marriage and earnings gained from that property, as well as gifts received from third parties during the marriage, unless the purpose of the gift is established otherwise.³⁵ This is notably in line with the definition of marital property in Section 4 of the Registry Policy.

18. The Chamber considered the provisions of the Family Law of the RS to which the Accused refers when suggesting that he cannot independently dispose of the Properties and that only the Accused’s share in the joint marital property can be used to fund his defence. It notes however that these provisions apply to the legal requirements concerning the division of property and liabilities owed by a spouse to a creditor.³⁶ These provisions are therefore irrelevant to the determination of whether the assets themselves constitute joint marital property under RS law.³⁷ The Chamber makes two observations in this regard. First, the lack of consent of the Accused’s spouse to the dissolution of marital property is not a basis upon which the Accused can avoid his obligation to contribute towards his defence. Second, an accused’s contribution towards his defence is neither a debt nor a liability owed to the Tribunal. Rather, an accused is expected to contribute to his defence to the extent that he is determined able to remunerate counsel.³⁸ The Registrar was therefore entitled to ignore those provisions when determining whether the Properties constituted marital property in accordance with the relevant law.³⁹

19. The Chamber will now turn to the Accused’s particular submission in relation to the [REDACTED] Property. It is observed that the Registrar expressly considered the Accused’s submission that the [REDACTED] Property is the separate property of his spouse. In particular, the Registrar considered statements of the Accused and his spouse that the [REDACTED] Property

³⁴ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 24, 31, 57–58.

³⁵ See Impugned Decision, Appendix II, confidential and *ex parte*, para. 24.

³⁶ See Family Law of the RS, Articles 271(1) and (2), 272(1).

³⁷ See Registry Policy, Section 6(e).

³⁸ See Registry Policy, Section 4 (definition of the “contribution” of an accused). The value of the contribution is deducted by the Registrar from defence team allotments. Registry Policy, Section 12.

³⁹ The Chamber considered the case of *Denisova and Moiyeyeva v. Russia* to which the Accused cites by analogy for the proposition that only his portion of the marital assets can be used to contribute to the costs of his defence. In that case, the European Court of Human Rights (“ECHR”) found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms on the basis that domestic courts failed to consider legitimate claims that only a convicted person’s share in jointly owned property can be confiscated during the course of criminal proceedings pursuant to Russian law. Two distinctions can be drawn between the case before the ECHR and the matter currently before the Chamber. It is first noted that the Tribunal is not seeking to seize the Accused’s Properties in contrast to the case before the ECHR. Second, the Chamber notes its finding that the Registrar did not unreasonably ignore those provisions of law put forward by the Accused.

was purchased in 1993 with money his spouse purportedly received in cash [REDACTED] and intended solely for her.⁴⁰

20. In rejecting the Accused's claim that the [REDACTED] Property was the separate means of his spouse, the Registrar noted that the Accused had not provided evidence that the funds were: (i) gifted to the Accused's spouse [REDACTED]; and (ii) "held separately and segregated, without the use of a banking institution, for over twenty years, and then used to purchase the [REDACTED] Property".⁴¹ In addition, the Chamber observes that the actual use of the [REDACTED] Property does not demonstrate that the property was purchased with funds gifted to, and intended solely for, the Accused's spouse. The Chamber notes in this regard the following observations made by the Registrar: (i) the property was purchased during the course of marriage by the Accused's spouse in 1993 and legally finalised in 1997;⁴² (ii) the property was purchased with the intention of making it a [REDACTED]; (iii) the Accused and his spouse both lived at the property [REDACTED]; and (iv) the Accused and his spouse were officially registered as residing at the [REDACTED].⁴³ It cannot therefore be inferred from its use that the [REDACTED] Property was intended solely for the Accused's spouse. In the absence of evidence that the actual funds used to purchase the [REDACTED] Property were from a gift made exclusively to the Accused's spouse, and in light of the actual use of the [REDACTED] Property, the Chamber considers that it was not unreasonable for the Registrar to reject statements of the Accused that the [REDACTED] Property was the separate property of his spouse.

21. Further, the Chamber observes the Accused's submission that pursuant to Article 273(1) of the Family Law of the RS, the Accused's spouse would be expected to be awarded the entire value of the [REDACTED] Property, were the matter to be placed before a court, since her contribution was larger.⁴⁴ The Chamber considers in this regard that the provision to which the Accused refers concerns the division of marital property and is therefore not relevant to the Registrar's determination as to whether the property constitutes joint marital property under the Family Law of the RS.⁴⁵ The Registrar did not ignore relevant provisions of law as asserted by the Accused.⁴⁶

⁴⁰ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 25–31.

⁴¹ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 26, 30 (internal citations omitted).

⁴² The Chamber notes that the Accused and his spouse were married in 1967. *See* Impugned Decision, Appendix II, confidential and *ex parte*, para. 28.

⁴³ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 23, 28–29.

⁴⁴ *See* Request, paras. 54–55.

⁴⁵ *See* Registry Policy, Section 6(e).

⁴⁶ *See supra*, para. 17.

22. For the foregoing reasons, it was therefore not unreasonable for the Registrar, in accordance with Article 10(A) of the Directive, to consider the full value of the joint marital assets of the Accused and his spouse when determining his disposable means.

2. Alleged errors in assessing the value of the Properties

23. The Accused first submits that the Registrar overvalued the [REDACTED] Property and the [REDACTED] by failing to deduct costs associated with the sale of the properties and relying on outdated appraisals.⁴⁷ Second, in relation to the [REDACTED] Property only, the Accused further argues that by failing to consider that a residence for two persons in [REDACTED] RS cannot be purchased for 7,000 euro, the Registrar's calculation of the Accused's contribution to the costs of his defence from the [REDACTED] Property is excessive.⁴⁸

24. The Registrar responds that the Accused's assets were reasonably and fairly assessed.⁴⁹ He first submits that the Accused neither challenged the Registry's determination of the value of his property nor presented evidence concerning the costs associated with the sale of the Properties in the Response Letter.⁵⁰ Second, the Registrar submits that he applied the proper methodology when valuing the [REDACTED] Property and that the Accused failed to provide evidence that a residence could not be purchased for the sum of 7,000 euro.⁵¹ The Registrar explains that he included [REDACTED] euro of equity in the [REDACTED] Property valued at [REDACTED], representing its value exceeding the reasonable needs of the Accused and his spouse.⁵² The Registrar therefore excluded the amount of 7,000 euro of equity in the [REDACTED] Property from the Accused's disposable means in accordance with the formula in Section 9 of the Registry Policy, which is applied equally to all accused seeking legal aid, after taking into account his particular circumstances.⁵³

25. In relation to the Accused's submission that the Registrar failed to deduct costs associated with the sale of property, such as real estate commissions and litigation costs, the Chamber notes that the Accused neither provides an estimation of these costs nor any evidence to support his contention which he now raises for the first time before the Chamber. In light of the Registrar's exclusive competence to make a determination on the Accused's indigence or partial indigence

⁴⁷ Request, para. 37.

⁴⁸ Request, paras. 57–58.

⁴⁹ Rule 33(B) Submission, paras. 67–68, 70–74.

⁵⁰ Rule 33(B) Submission, paras. 68–69, 73.

⁵¹ Rule 33(B) Submission, paras. 75–79.

⁵² See Rule 33(B) Submission, para. 76; Impugned Decision, Appendix II, confidential and *ex parte*, paras. 40, 43.

⁵³ See Impugned Decision, Appendix II, confidential and *ex parte*, paras. 40–43. The Registrar considered the make-up of the Accused's family [REDACTED]. See also Rule 33(B) Submission, paras. 75–76, 79.

pursuant to Article 10 of the Directive, the Chamber is not the appropriate forum for the Accused to raise this matter for the first time.⁵⁴ It was therefore not unreasonable for the Registrar not to consider hypothetical costs which were not put before him by the Accused.

26. The Chamber further observes that the Accused did not challenge the Registrar's determination of the value of the Properties in the Response Letter but now contends that the Registrar erroneously relied on outdated appraisals. When determining the value of the Properties, the Registrar considered valuations provided by the Accused during the course of the Article 9 inquiry in addition to appraisals from the RS tax authorities.⁵⁵ In both instances, the Registrar accepted, to the benefit of the Accused, the lower appraisal of each respective property.⁵⁶ Although the Accused now challenges the appraisals accepted by the Registrar, it is however insufficient for the Accused to merely state that the Registrar relied on "outdated appraisals" without adducing evidence to substantiate his claim. If the Accused believes that the appraisals are outdated, the burden is on the Accused to provide alternative valuations for consideration.

27. The Chamber will now turn to the Accused's submission that the Registrar failed to consider whether a residence could be purchased in [REDACTED] for 7,000 euro. Pursuant to Section 5(a) of the Registry Policy, the equity in the principal family home of an accused may be included in his disposable means to the extent that the property exceeds the reasonable needs of the accused and his spouse.⁵⁷ The amount of value which is greater than the average family home in the region in which the principal family home of an accused is located is therefore to be included in the disposable means of an accused pursuant to Sections 5(a) and 9 of the Registry Policy.

28. In applying the standard formula set forth in Section 9 of the Registry Policy, the Registrar concluded that the [REDACTED] Property exceeds the reasonable means of the Accused and his spouse in the amount of [REDACTED] euro.⁵⁸ The Registrar based his conclusion on information he obtained concerning the value of the [REDACTED] Property and the average number of square metres of living space per person in BiH from official documentation from the RS.⁵⁹ In particular,

⁵⁴ See *Kvočka et al.* Appeal Decision, para. 14. The Chamber notes that the burden was on the Accused to demonstrate in the first instance before the Registrar that he lacked the means to remunerate counsel (*Kvočka et al.* Appeal Decision, para. 13). See also *supra*, para. 9.

⁵⁵ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 39, 53–55, footnotes 43, 53.

⁵⁶ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 39, 54, footnotes 43, 53. In relation to the [REDACTED] Property, the Registrar accepted as a fair valuation the appraisals conducted by a Permanent Court expert as provided by the Accused. In relation to the [REDACTED], the Registrar accepted the lower appraisal from the RS tax authorities, as opposed to the appraisal by two Permanent Court experts as submitted by the Accused.

⁵⁷ See also Directive, Article 10(A).

⁵⁸ See Impugned Decision, Appendix II, confidential and *ex parte*, paras. 40, 43.

⁵⁹ See Impugned Decision, Appendix II, confidential and *ex parte*, para. 40, footnote 44.

the Registrar considered that the [REDACTED] Property is valued at [REDACTED] euro and is approximately [REDACTED] larger than the average number of square metres of living space for two persons in BiH.⁶⁰ The Chamber considers that the amount of equity included from the [REDACTED] Property was therefore not excessive as alleged by the Accused but rather a result of the difference in the size and value of this property as compared to the average living space for two persons in BiH.

29. Although the Accused alleges that the Registrar failed to consider that a property cannot be purchased for 7,000 euro in [REDACTED], the Accused has failed to adduce evidence in support of his contention. The Chamber finds that it was therefore not unreasonable for the Registrar to exclude from his consideration facts which were not put before him.⁶¹ Accordingly, the Accused has not demonstrated that the Registrar unreasonably included [REDACTED] euro of equity in the disposable means of the Accused which was calculated based on official documentation and in accordance with the formula provided in Section 9 of the Registry Policy.

30. For the foregoing reasons, the Chamber finds that the Registrar was not unreasonable in assessing the value of the Properties.

3. Alleged errors in relation to the disposability of transferred properties

31. The Accused further submits that it was unreasonable for the Registrar to include the [REDACTED] Property and his spouse's share of the [REDACTED] as part of the Accused's disposable means, arguing that they are not readily disposable since ownership was transferred.⁶² He argues that litigation would be required by his defence team to void their transfer and liquidate the assets which would cost more than that owed to members of the Accused's defence team.⁶³ The Accused further submits that since the transfers of these properties were disclosed in his Declaration of Means, duly recorded in the RS, and had long been planned,⁶⁴ the Registrar therefore erred when concluding that the purpose of the transfer was to conceal the assets.⁶⁵

32. The Registrar responds that it was reasonable to consider the Properties as readily disposable assets.⁶⁶ He argues that the fact that the transfers occurred during the course of the Article 9

⁶⁰ See Impugned Decision, Appendix II, confidential and *ex parte*, para. 40. The official documentation relied on by the Registrar provides that the average living space per person in RS is 23.27 square metres.

⁶¹ See *supra*, footnote 54.

⁶² Request, paras. 26–32.

⁶³ Request, paras. 30–32.

⁶⁴ Request, paras. 39, 41.

⁶⁵ Request, paras. 40, 42. See also Request, para. 38.

⁶⁶ Rule 33(B) Submission, paras. 33, 53.

inquiry demonstrates that they are readily disposable.⁶⁷ The Accused, according to the Registrar, “should be estopped from relying on a purposeful transfer of assets” which occurred neither at an arm’s length nor for any consideration, to support his contention that the property is no longer readily disposable.⁶⁸

33. Pursuant to Section 5(f) of the Registry Policy, “any assets previously owned by the applicant, his spouse and persons with whom he habitually resides” which are transferred “for the purpose of concealing those assets” are included in the determination of an accused’s disposable means. The Chamber notes that the Accused’s spouse transferred, for no consideration, the [REDACTED] Property [REDACTED], and the [REDACTED], on 24 March 2011 and 28 March 2012, respectively.⁶⁹ The Registrar was therefore entitled under the Registry Policy to include the equity in the [REDACTED] Property and his spouse’s share of the [REDACTED] to the extent that he was satisfied, on the balance of probabilities, that the Properties were transferred for the purpose of removing the assets from consideration within the Accused’s disposable means.⁷⁰

34. The Chamber considers that the Accused misapprehends the notion of “concealment” insofar as he contends that the fact that these transfers were disclosed to the Registrar in the Response Letter and recorded in the appropriate land registry demonstrates that the Properties were not transferred for the purpose of concealing his assets.⁷¹ Similarly, assets may be included in an accused’s disposable means if an accused has enlarged the assets of a family member or of anyone else in order “to avoid his obligations under the Directive, or in general to conceal or obfuscate the extent of his own assets”.⁷² It has also been established before the Tribunal that the “concealment of assets includes a visible transfer to one outside the Accused’s immediate household (whose assets the Registry would not normally take into account) for no consideration”.⁷³

35. As considered by the Registrar, the Properties were transferred as a gift for *no consideration*, despite being of considerable value, during the course of the Article 9 inquiry.⁷⁴ The Chamber observes that these transfers were made to [REDACTED] and who are therefore excluded from

⁶⁷ Rule 33(B) Submission, paras. 34, 36–37, 54.

⁶⁸ Rule 33(B) Submission, para. 35. *See also* Rule 33(B) Submission, paras. 42–43, 56–57.

⁶⁹ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 34–35, 62–63.

⁷⁰ *See* Impugned Decision, Appendix II, confidential and *ex parte*, paras. 36, 64.

⁷¹ [REDACTED]. *See* Request, para. 29.

⁷² *Krajišnik* 2004 Decision, para. 22.

⁷³ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 33, 61 [REDACTED].

⁷⁴ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 34–35, 60, 62–63. The Chamber notes in particular that the [REDACTED] was transferred shortly following the Accused’s receipt of the Registrar’s Letter outlining the Registrar’s finding with respect to ownership of the property. The [REDACTED] Property was valued at [REDACTED] euro and the [REDACTED] was valued at [REDACTED] euro. Impugned Decision, Appendix II, confidential and *ex parte*, paras. 39, 53.

inclusion in the Accused's disposable means.⁷⁵ The Accused was acutely aware of this fact as evidenced by the Response Letter wherein he informed the Registrar of [REDACTED].⁷⁶ In this regard, the Chamber further notes that the Accused does not substantiate his claim that the transfers were not made to exclude the assets from consideration or that the transfers, as he contends, "had been long planned".⁷⁷ To the contrary, the particular timing of the transfers suggests that the transfers were indeed made to enlarge the assets of [REDACTED] so to obfuscate the extent of his assets and those of his spouse constituting marital property. In light of the circumstances, the Chamber therefore finds that it was not unreasonable for the Registrar to conclude, on a balance of probabilities, that the Properties were transferred for the purpose of concealing the Accused's assets.

36. In relation to the Accused's contention that the Properties are no longer readily disposable, the Chamber emphasises that the Accused cannot rely on such purposeful transfers to claim that the Properties are no longer readily disposable so as to benefit from the exclusion provided in Section 6(d) of the Registry Policy. To allow such practice would be contrary to the spirit of the Directive and the Registry Policy.⁷⁸ Since the Registrar did not unreasonably find that the purpose of the transfers was to conceal the assets, the fact that the Properties were transferred has no impact on their disposability. In light of the foregoing, it was therefore not unreasonable for the Registrar to include the Properties in the disposable assets of the Accused.

4. Alleged errors in including the pension of the Accused's spouse in his disposable means

37. The Accused argues that the Registrar erred in considering the monthly pension of the Accused's spouse amounting to 287 euro as readily disposable means and failed to consider that the other assets available to her cannot be used to fund her living expenses.⁷⁹ According to the Accused, it was therefore unreasonable for the Registry to include his spouse's pension in his disposable means.⁸⁰

⁷⁵ Impugned Decision, Appendix II, confidential and *ex parte*, footnote 45. [REDACTED]. See Directive, Article 10(A); Registry Policy, Section 6(d).

⁷⁶ Response Letter, pp. 1, 2.

⁷⁷ See *Tolimir* Appeal Decision, para. 23.

⁷⁸ Section 6(d) of the Registry Policy excludes from the disposable means "the equity in assets owned by [an accused], his spouse, or persons with whom he habitually resides that are not readily disposable".

⁷⁹ Request, para. 59.

⁸⁰ Request, paras. 59–61.

38. The Registrar responds that the living expenses of the Accused and those of his spouse were properly considered in assessing the Accused's contribution to the costs of his defence in accordance with Article 10(A) of the Directive and Section 7(d) of the Registry Policy.⁸¹

39. The Directive and Registry Policy establish a regime whereby the income of an accused's spouse is included in his disposable means. Pursuant to Article 10(A) of the Directive, the Registrar shall determine the extent to which an accused can remunerate counsel "by taking into account means of all kinds of which the [...] accused has direct or indirect enjoyment or freely disposes, including but not limited to [...] pensions". Section 7(d) of the Registry Policy similarly provides that "government pensions" of an accused or his spouse constitute income to be included in the Registrar's assessment of the disposable means of an accused. The Chamber observes in this regard that although Section 8 of the Registry Policy enumerates a number of sources of income which are excluded from the disposable means of an accused, income received from government pensions are not excluded.⁸² The Registrar's inclusion of 8,059 euro, representing the monthly pension of the Accused's spouse in the amount of 287.81 euro over the course of the estimated duration of the trial (28 months),⁸³ was therefore in line with the Registry's policy to include a spouse's pension in the assets of an accused.⁸⁴ In accordance with Article 10 of the Directive and Section 7(d) of the Registry Policy, it was therefore not unreasonable for the Registrar to consider the pension of the Accused's spouse when determining the Accused's disposable means.⁸⁵

40. The Chamber observes that the Registrar was able to determine the make-up of the Accused's family and the Accused's disposable means.⁸⁶ The Chamber emphasises that the Registrar was also able to ascertain the estimated living expenses of both the Accused and his spouse to ensure they can meet basic family expenditures in accordance with the formula set forth

⁸¹ Rule 33(B) Submission, paras. 85–87.

⁸² See Registry Policy, Section 8. The Chamber considers that the Accused alleged in the Response Letter that his spouse's pension was "like a government welfare payment" and therefore "is not subject to legal claims". Response Letter, p. 2. See also Rule 33(B) Submission, para. 88. Although "government welfare payments" are to be excluded from the Accused's disposable means pursuant to Section 8(a) of the Registry Policy, the Accused however has not raised this matter in the Request nor has he provided material in support of his claim that his spouse's pension constitutes a "government welfare payment".

⁸³ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 71–74.

⁸⁴ See *Tolimir* Appeal Decision, para. 34, discussing the "salary" of an accused's spouse.

⁸⁵ Although the Accused refers to the Trial Chamber's decision in the *Prosecutor v. Šešelj* case to support his assertion that it was unreasonable for the Registrar to take into account his spouse's pension, the conclusions contained therein are inapplicable in the present case; the Chamber considers the circumstances in that decision distinguishable from those before the Chamber in this case. [REDACTED] The Chamber further notes that the Appeals Chamber ruled that the *Šešelj* Decision, which directed the Registrar to fund 50% of the funds allocated to an indigent accused, was not a final ruling on the matter but an interim measure until the means of the Accused could be assessed. See *Prosecutor v. Šešelj*, Case No. IT-03-67-R33B, Public Redacted Version of the "Decision on the Registry Submissions Pursuant to Rule 33(B) Regarding the Trial Chamber's Decision on Financing of Defence", 17 May 2011, para. 28. See also *Šešelj* Decision, p. 8.

⁸⁶ See Impugned Decision, Appendix II, confidential and *ex parte*, paras. 31, 37, 55, 64, 74, 82, footnote 26.

in Section 10 of the Registry Policy, which is applied equally to all accused.⁸⁷ In doing so, the Registrar calculated the estimated monthly living expenses of the Accused and his spouse to be 779.85 euro per month based on official data obtained from the RS Institute of Statistics concerning the average monthly expenditures in RS,⁸⁸ in addition to expenses that are particular to the Accused, such as tuition fees, extraordinary medical care, and reasonable visits to The Hague.⁸⁹ The Registrar's determination of the estimated living expenses of the Accused and his spouse are not contested by the Accused.

41. Although the Accused contends that the Properties are not readily disposable and cannot therefore be used to fund his spouse's living expenses, the Chamber considers that since the transferred properties were properly included in the disposable means of the Accused, it was also therefore not unreasonable for the Registrar to assume the reasonable prospect of the Accused raising funds against the Properties by way of sale, mortgage, or lease, notwithstanding the transfers for living expenses.⁹⁰

42. In light of the foregoing, the Registrar was not unreasonable in including the Accused's spouse's pension in his disposable means.

5. Alleged error in including monies from the Accused's UNDU Account in the Accused's disposable means

43. The Accused submits that the Registrar erred in including funds from the UNDU Account as part of his disposable means.⁹¹ He argues that the UNDU Account contains monies sent by friends and family for his "nutritional and cultural needs" and that these gifts would be revoked by contributors were the funds to be "diverted" to fund his legal defence.⁹²

44. The Registrar responds that he reasonably took into account the amounts deposited by friends and family into the UNDU Account.⁹³ The Registrar argues that an accused who requests funds to

⁸⁷ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 97–98.

⁸⁸ The average monthly expenditures includes a basket of commodities and other living costs such as transportation, communications, tobacco, clothes, footwear, education and culture. Impugned Decision, Appendix II, confidential and *ex parte*, para. 97, footnote 70.

⁸⁹ Impugned Decision, Appendix II, confidential and *ex parte*, footnote 71.

⁹⁰ See *Tolimir* Appeal Decision, para. 24. See also Registry Policy, Section 4 (definition of "readily disposable asset").

⁹¹ Request, paras. 62–63.

⁹² Request, para. 62.

⁹³ Rule 33(B) Submission, paras. 93–94.

pay his defence team on the basis of indigency cannot “ earmark parts of his available means for personal use” and notes that the nutritional needs and living expenses are covered by the UNDU.⁹⁴

45. At the outset, the Chamber notes that the basic living expenses and nutritional needs of the Accused are provided for by the UNDU. Pursuant to Section 5(d) of the Registry Policy, the equity in an accused’s UNDU Account, less allowances paid by the UNDU into that account, are to be considered in determining an accused’s disposable means. Although the Registry Policy excludes certain types of income from the disposable means of an accused, monies provided by friends and family to an accused are not excluded pursuant to Section 8.

46. The Chamber observes that when including 3,503 euro from the Accused’s UNDU Account as part of his disposable means, the Registrar considered that the Accused received in his UNDU Account amounts representing UN allowances provided weekly in the amount of 15.88 euro to detainees for additional and miscellaneous living costs and other amounts from outside sources, including friends and family.⁹⁵ While the portion of the Accused’s UNDU Account representing monies obtained from friends and family was included in the Accused disposable means, weekly UN allowances were excluded.⁹⁶ The Chamber considers the Registrar’s inclusion of the portion of the Accused’s UNDU Account representing monies from friends and family to be consistent with Section 5(d) of the Registry Policy. Having correctly excluded UN weekly allowances, it was therefore not unreasonable for the Registrar to include the portion of the Accused’s UNDU Account representing monies received from friends and family in the Accused’s disposable means.

6. Alleged errors in relation to the Accused’s alleged liability arising from foreign judgements

47. The Accused submits that the Registrar erred in finding that the two judgements arising out of civil lawsuits against him in the U.S. and France (together, “Foreign Judgements”) ordering him to pay \$775 million⁹⁷ and 215,000 euro, respectively, in punitive and compensatory damages to

⁹⁴ Rule 33(B) Submission, para. 93.

⁹⁵ See Impugned Decision, Appendix II, confidential and *ex parte*, paras. 78–82. The Registrar considered that from 31 July 2008 and 22 June 2012, the Accused’s received in his UNDU Account 36,432.77 euro from outside sources and 3,176 euro as UN allowances. The Accused’s UNDU Account balance as of 22 June 2012 in the amount of 3,808.68 euro was considered relevant for the purposes of the Registrar’s determination, thereby excluding 35,800.09 euro which the Accused had already spent since the opening of his UNDU Account. Impugned Decision, Appendix II, confidential and *ex parte*, paras. 79–80.

⁹⁶ Impugned Decision, Appendix II, confidential and *ex parte*, paras. 80–81.

⁹⁷ The Chamber notes that the Accused erroneously refers to the amount of \$775 million in the Request, when in fact the US District Court ordered damages against the Accused in the amount of \$745 million. See Request, para. 20, *but see* Request, Annex D. The Chamber further notes that the Registrar also erroneously refers to the amount of \$755 million in the Impugned Decision. See Impugned Decision, Appendix II, confidential and *ex parte*, para. 92; Rule 33(B) Submission, footnote 16.

victims of the conflict in BiH do not constitute liabilities.⁹⁸ The Accused argues that any proceeds from the sale of his assets would be subject to the Foreign Judgements and should not therefore be included in his disposable means. He submits that the Registrar's consideration of the effects of the Foreign Judgements in BiH was erroneous and that the Registrar failed to consider whether they are enforceable in The Netherlands.⁹⁹ The Accused argues that since the Foreign Judgements are enforceable in The Netherlands, members of his defence team would be "subject to having to pay over any monies received from [the Accused] to his judgement creditors, or, at least, to be drawn into expensive litigation over the payments".¹⁰⁰ He contends that this would impact the willingness of his defence team to work on his behalf.¹⁰¹ The Accused further argues that the Impugned Decision may be quashed on the sole basis that the amount of each of the Foreign Judgements exceeds the amount of his purported assets.¹⁰²

48. The Registrar responds that he acted reasonably and that the Accused has not demonstrated that his assets are subject to liabilities as a result of the Foreign Judgements.¹⁰³ In support of his submission, the Registrar first argues that as the Accused's primary assets that comprise his disposable means are located in BiH, only a foreign judgement against the Accused which is enforceable in BiH through an official recognition would be relevant to a determination of the Accused's disposable means.¹⁰⁴ The Registrar further responds that the enforceability of the Foreign Judgements in The Netherlands is irrelevant as none of the assets examined in the Impugned Decision are located in The Netherlands.¹⁰⁵ In any event, the Registrar asserts that the Accused has failed to demonstrate that the Foreign Judgements were recognised in Dutch courts and that monies paid to his defence team members would be subject to such an attachment.¹⁰⁶

49. The Chamber notes at the outset that the Registrar considered the Accused's submission in the Response Letter that "any proceeds to which he may be entitled from the sale of his assets would be subject to two foreign judgements against him".¹⁰⁷ In excluding the Foreign Judgements

⁹⁸ Request, paras. 20, 25. See Request, Annex D, *Kadic v. Karadžić*, No. 93 Civ. 1163, Judgment, S.D.N.Y., 16 August 2000); Request, Annex E, Tribunal de grande instance de Paris, *Zuhra Kovač et consorts c. Radovan Karadžić et consorts*, 14 mars 2011. See also Impugned Decision, Appendix II, confidential and *ex parte*, paras. 93–94.

⁹⁹ Request, paras. 21, 23.

¹⁰⁰ Request, para. 24. The Accused notes that most members of his defence team work, reside, and have bank accounts in the Netherlands, see Request, para. 22.

¹⁰¹ Request, para. 24. See Request, para. 22.

¹⁰² Request, para. 25.

¹⁰³ Rule 33(B) Submission, para. 24.

¹⁰⁴ Rule 33(B) Submission, para. 25.

¹⁰⁵ Rule 33(B) Submission, para. 26.

¹⁰⁶ Rule 33(B) Submission, paras. 27–28. See also Rule 33(B) Submission, para. 31.

¹⁰⁷ See Impugned Decision, Appendix II, confidential and *ex parte*, para. 92.

as liabilities in his determination of the Accused's disposable means, the Registrar concluded that he was not satisfied, based on applicable law and the documents provided, that the Foreign Judgements are enforceable against the assets of the Accused.¹⁰⁸ The Registrar considered that the enforceability of either of the Foreign Judgements is contingent on official recognition by a court in BiH, taking into account that the Accused failed to adduce evidence that recognition has been sought or granted.¹⁰⁹ In this regard, the Chamber observes that all of the Accused's assets that comprise his disposable means, as considered by the Registrar, are located in BiH, save for the small amount of funds in his UNDU Account.¹¹⁰ Since the majority of the Accused's assets are located in BiH, the Registrar therefore correctly limited his consideration to the legal framework governing the enforceability of the Foreign Judgements in BiH. Although the Accused contends that the Registrar ought to have considered the enforceability of the Foreign Judgements in The Netherlands, he has adduced no evidence that the monies paid to members of the Accused's defence team would be subject to attachment or that recognition of the Foreign Judgements in The Netherlands has been sought.¹¹¹ Therefore, it was also not unreasonable for the Registrar to exclude from his consideration whether the Foreign Judgements were enforceable in The Netherlands.

50. The Chamber also observes that the Accused has failed to adduce evidence that he himself has taken steps to satisfy the Foreign Judgements against him. To the contrary, the Accused refused to participate with post-judgement efforts by the plaintiffs to obtain information concerning the nature, location, status, and extent of the Accused assets.¹¹² The Accused cannot seek to rely on the judgements for which he himself has not attempted to satisfy. In the absence of evidence that recognition has been sought or granted by a court in BiH, the Chamber finds that the Registrar was not unreasonable in excluding the Foreign Judgements as liabilities.

B. Alleged failure to consider the option of reassigning the interest in the Properties

¹⁰⁸ Impugned Decision, Appendix II, confidential and *ex parte*, para. 94.

¹⁰⁹ Impugned Decision, Appendix II, confidential and *ex parte*, para. 93. In particular, the Registrar considered that BiH is not a party to the Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters (1144 UNTS 249) ("Convention") and that under the relevant law, recognition by a court in BiH is required to enforce the Foreign Judgements as against the Accused's assets. *See* Impugned Decision, Appendix II, confidential and *ex parte*, para. 93, footnote 68, citing the Convention and Article 458 of the Law on Civil Procedure of the Republika Srpska, Official Gazette of the Republika Srpska, No. 58/03, 17 July 2003.

¹¹⁰ *See* Impugned Decision, Appendix II, confidential and *ex parte*, paras. 43, 64, 74, 93. Concerning the Accused's UNDU Account, *see supra*, paras. 43–46.

¹¹¹ In this regard, the Chamber notes the Accused's submission concerning the unwillingness of his defence team to work on his behalf but considers such a consideration to be irrelevant to the determination of the extent to which the Accused is able to remunerate members of his defence team.

¹¹² [REDACTED]. *See* Rule 33(B) Submission, para. 30, referring to Request, Confidential Annex G.

51. The Accused submits that the Registrar erred when he failed to consider “the more reasonable alternative of having the Accused sign over whatever interest he has in those properties to the Registrar”.¹¹³ He further submits that the Registrar can then “attempt to recover whatever of [the Accused’s] assets he believes exist in those properties without disrupting the trial process”.¹¹⁴

52. The Registrar responds that he correctly rejected the option of reassigning the Accused’s interest in his properties to the Tribunal.¹¹⁵ According to the Registrar, the Accused’s proposal was neither relevant nor a reasonable alternative available at the Registrar’s disposal.¹¹⁶ The Registrar further submits that the Accused has a duty to contribute to the costs of his defence to the extent that he is determined capable.¹¹⁷

53. The Chamber recalls that the Registry Policy establishes that an accused is expected to contribute to his defence to the extent that he is able to remunerate counsel.¹¹⁸ The manner in which the contribution is to be made by an accused is however not regulated by the Directive or the Registry Policy. The Chamber observes that the duty of the Registrar is limited under Article 6(C) of the Directive to “pay that portion of [an accused’s] defence costs which the accused does not have sufficient means to cover, as determined in accordance with the Registry Policy”. Although the Accused suggests the option of assigning his interest in the Properties to the Registrar, it is noted that neither the Directive nor the Registry Policy provide the Registrar with the authority to reassign the Accused’s interest in the Properties to the Tribunal to cover the costs associated with his defence. In this regard, the Chamber concurs with the Registrar’s assertion that “[t]he Tribunal does not enter into agreements for the transfer of real or personal property with persons indicted by the Tribunal. Nor is the Tribunal a creditor.”¹¹⁹ The assignment of the Accused’s interest in the Properties to the Registrar was therefore not an option available to the Registrar. Accordingly, the Chamber finds that it was not unreasonable for the Registrar not to consider it.

C. Alleged unreasonable delay in issuing the Impugned Decision

54. The Accused argues that in delaying the issuance of the Impugned Decision until the “eve of the commencement of the defence case”, the Registrar unreasonably and unduly delayed his

¹¹³ Request, para. 49

¹¹⁴ Request, para. 49. *See also* Request, para. 50.

¹¹⁵ Rule 33(B) Submission, paras. 81–83.

¹¹⁶ Rule 33(B) Submission, para. 83. *See* Rule 33(B) Submission, paras. 81–82.

¹¹⁷ Rule 33(B) Submission, para. 81.

¹¹⁸ *See* Registry Policy, Section 4. The value of an accused’s contribution is deducted by the Registrar from defence team allotments. Registry Policy, Section 12.

¹¹⁹ Rule 33(B) Submission, para. 81.

determination of the Accused's ability to contribute to his defence costs.¹²⁰ It is the Accused's position that this shifts the burden of proof onto the Registrar to establish why legal aid should now be withheld.¹²¹

55. The Registrar responds that he acted reasonably in conducting the Article 9 inquiry.¹²² He submits that the Accused suffered no undue delay or prejudice as he received public funds towards the cost of his defence throughout the duration of the Article 9 inquiry and was granted additional funds by a decision issued by the President of the Tribunal.¹²³ The Registrar further contends that the process to determine the extent to which the Accused could remunerate counsel was complicated by the Accused's own actions.¹²⁴

56. At the outset, the Chamber notes that the Accused submitted the Declaration of Means on 29 September 2008 and that the Registrar issued the Impugned Decision on 11 October 2012. It is however emphasised that the Accused continued to receive funds covering the costs of his defence throughout the duration of the Article 9 inquiry.¹²⁵ Accordingly, the Accused did not suffer any prejudice as a result of the length of time, albeit substantial, it took the Registrar to issue the Impugned Decision after receiving the Declaration of Means. In the absence of prejudice there is no reason to examine whether the delay in issuing the Impugned Decision was reasonable and there is no basis to grant the remedies sought by the Accused.

¹²⁰ Request, paras. 44–45.

¹²¹ Request, paras. 45–47.

¹²² Rule 33(B) Submission, para. 104.

¹²³ Rule 33(B) Submission, para. 97, citing *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, President's Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 ("President's Decision"), para. 45.

¹²⁴ Rule 33(B) Submission, paras. 100–102.

¹²⁵ See *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, President's Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010, paras. 46, 56; President's Decision, para. 45.

IV. Disposition

57. For the foregoing reasons, the Chamber, pursuant to Article 13(B) of the Directive, hereby **CONFIRMS** the Impugned Decision and **DENIES** the Request.

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



Judge O-Gon Kwon
Presiding

Dated this third day of December 2014
At The Hague
The Netherlands

[Seal of the Tribunal]