

**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-00-39-A  
Date: 11 September 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron

**Registrar:** Mr. Hans Holthuis

**Decision of:** 11 September 2007

**PROSECUTOR**

v.

**MOMČILO KRAJIŠNIK**

**PUBLIC**

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**DECISION ON KRAJIŠNIK REQUEST AND ON  
PROSECUTION MOTION**

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**The Office of the Prosecutor**

Mr. Peter Kremer QC

**The Accused**

Mr. Momčilo Krajišnik

**Amicus Curiae**

Mr. Colin Nicholls QC

*[Handwritten signature]*

1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of a “Request to Provide Conditions to Work and to Reverse the Decision of the Registry of 7 June 2007”, filed by Momčilo Krajišnik on 18 June 2007 (“Krajišnik Request”) and of a “Motion for Clarification of the Order of Filings and the Calculation of Time Limits for Filings”, filed by the Prosecution on 5 July 2007 (“Prosecution Motion”).

## I. KRAJIŠNIK REQUEST

### A. Background and Submissions

#### 1. The Request Itself

2. In the “Decision on Momčilo Krajišnik’s Request to Self-Represent, on Counsel’s Motions in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007”, filed on 11 May 2007 (“11 May 2007 Decision”), the Appeals Chamber held that Momčilo Krajišnik (“Mr. Krajišnik”) could represent himself on his appeal and requested “the Registry to take any necessary steps to implement” this holding.<sup>1</sup>

3. Since the 11 May 2007 Decision, the Registry and Mr. Krajišnik have been in communication as to the modalities of his self-representation. The Registry and Mr. Krajišnik have not always seen eye-to-eye on these modalities, however, and the Krajišnik Request asks the Appeals Chamber to reverse certain of the Registry’s determinations and to provide him with specified work conditions.<sup>2</sup> Citing to a number of provisions in Article 21 of the Statute of the Tribunal (“Statute”),<sup>3</sup> Mr. Krajišnik asks for access to particular individuals, for financial support, and for various resources.

4. In relation to access, Mr. Krajišnik raises two concerns. First, he states that the Registry has not approved Deyan Brashich to serve as his legal associate and Stefan Karganović to serve as his translator/case-manager.<sup>4</sup> He challenges the Registry’s rulings with regard to these specific individuals. Second, Mr. Krajišnik states that he has not been permitted direct contact with

<sup>1</sup> 11 May 2007 Decision, paras 24-25.

<sup>2</sup> Krajišnik Request, paras 16, 18, 20-21.

<sup>3</sup> *Id.*, para. 14.

<sup>4</sup> *Id.*, para. 12.

investigators from his team at trial.<sup>5</sup> He claims that in order to be on equal footing with represented accused, he should “be allowed to contact all members of [his] Defence team directly”.<sup>6</sup>

5. In relation to financial support, Mr. Krajišnik makes several requests. First, he asks that he “be provided the free assistance of an interpreter”.<sup>7</sup> Second, making reference to the principle of “equality (limited)”, he asks for “means to finance members of the Defence team as for a case at level III difficulty”.<sup>8</sup> He also presents various arguments why, in his view, this case is complex enough to require level III status.<sup>9</sup>

6. As to resources, the Krajišnik Request makes several general statements.<sup>10</sup> More specifically, Mr. Krajišnik seeks use of “a telephone, scanner, fax and photocopier without time constraints during the whole day”.<sup>11</sup> In addition, Mr. Krajišnik asks “that the documents [he] receive[s] from the Prosecution and from the Appeals Chamber be sent to [him] with a Serbian translation or that these documents be translated by the interpreter [whom he] requested visit [him] in the prison”.<sup>12</sup>

7. The Krajišnik Request also asks the Appeals Chamber to extend the deadline for the filing of Mr. Krajišnik’s Appeal Brief. Mr. Krajišnik suggests that an extension is warranted for four apparently independent reasons: first, because he has lost time because “technical conditions” have not been met for his “unhindered work on the appeal”; second, in light of “the length of time the submission announcing the appeal was considered (30 days, as prescribed by the [R]ules”); third, “due to the complexity and scope of the appeal”; and fourth, because his former counsel on appeal (now the current *amicus curiae*) has not yet provided him with “the archive and documentation”.<sup>13</sup>

8. Finally, Mr. Krajišnik asks for an “extraordinary status conference” so that he can present his requests orally to the Appeals Chamber.<sup>14</sup>

## 2. The Prosecution Response and the Replies

9. The Prosecution submitted the “Prosecution Response to Momčilo Krajišnik’s Request” on 28 June 2007 (“Prosecution Response”). The Prosecution raises several technical objections to the Krajišnik Request, including its failure to attach the correspondence between Mr. Krajišnik and the

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<sup>5</sup> *Id.*, para. 12.

<sup>6</sup> *Id.*, para. 16.

<sup>7</sup> *Id.*, para. 14.

<sup>8</sup> *Id.*, para. 18.

<sup>9</sup> *Id.*, para. 20.

<sup>10</sup> *Id.*, para. 21.

<sup>11</sup> *Id.*, para. 21 and fn. 10.

<sup>12</sup> *Id.*, para. 11-13.

<sup>13</sup> *Id.*, para. 17.

Registry as exhibits<sup>15</sup> and its failure to abide by the Practice Directions in various ways, including the absence of precise citations to portions of the referenced documents and the absence of a word count.<sup>16</sup> On the merits, the Prosecution opposes the Krajišnik Request for the most part. The Prosecution considers that as to issues of access, the Registry has the discretion to grant or withhold access to particular persons, and Mr. Krajišnik has not shown the Registry's decisions to jeopardize his right to a fair proceeding.<sup>17</sup> Similarly, the Prosecution considers that Mr. Krajišnik has not shown how a lack of direct contact with investigators impinges on his fair trial rights.<sup>18</sup> With regard to financial support, the Prosecution suggests that the language of Article 21(4)(d) of the Statute makes clear that "Tribunal funds are available only to those who request assigned legal assistance and not for those persons choosing to defend themselves in person or through legal assistance of their own choosing".<sup>19</sup> Since Mr. Krajišnik is not entitled to legal aid, the Registry has no need to designate the case's level of complexity.<sup>20</sup> The Prosecution considers, however, that Mr. Krajišnik is entitled to "the provision of adequate language facilities to enable him to participate effectively in an appeal which is being conducted in English".<sup>21</sup> In this regard, the Prosecution observes that Mr. Krajišnik should "receive[] filings from the other parties and from the Appeals Chamber in a language he understands".<sup>22</sup> As to Mr. Krajišnik's other requests for resources, the Prosecution considers that they are too vague to enable the Appeals Chamber to identify the challenged actions of the Registry.<sup>23</sup>

10. The Prosecution also opposes Mr. Krajišnik's requests for an extension of time with regard to his Appeal Brief and for an extraordinary status conference. As to the request for the extension of time, the Prosecution considers that the request is premature and in any event lacks good cause. In particular, the Prosecution notes that as of the date of its filing, the B/C/S translation of the Trial Judgement had not yet issued and hence the 75-day clock for Mr. Krajišnik's appeal had not yet begun to run.<sup>24</sup> In the Prosecution's view, no extensions should be given for delays that occurred before this clock began ticking,<sup>25</sup> and Mr. Krajišnik's submissions with regard to complexity should be dismissed as cursory.<sup>26</sup> Finally, with regard to the request for an extraordinary status conference, the Prosecution states that no provision in the Rules of Procedure and Evidence ("Rules") provides

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<sup>14</sup> *Id.*, para. 21.

<sup>15</sup> Prosecution Response, para. 3.

<sup>16</sup> *Id.*, paras 30, 33-34.

<sup>17</sup> *Id.*, para. 19; *see also id.*, paras 24-28.

<sup>18</sup> *Id.*, para. 16.

<sup>19</sup> *Id.*, para. 12.

<sup>20</sup> *Id.*, para. 32.

<sup>21</sup> *Id.*, para. 17.

<sup>22</sup> *Id.*, para. 22.

<sup>23</sup> *Id.*, para. 36.

<sup>24</sup> *Id.*, para. 38.

<sup>25</sup> *See id.*, para. 40.

<sup>26</sup> *Id.*, para. 43.

for such status conferences and that in any event the Krajišnik Request does not warrant such measures.<sup>27</sup>

11. On 2 July 2007 *amicus curiae* filed a document styled as “*Amicus Curiae’s Reply to Prosecution Response to Momčilo Krajišnik’s Request*” (“*Amicus Reply*”). The *Amicus Reply* submits that while “the plain language of Article 21(4)(d) is not conclusive as to whether legal aid funds are available for both assigned counsel and self-represented litigants”, “in order for [Mr. Krajišnik] to effectively represent himself in this Appeal, it is realistic and necessary that he be provided with some sort of language, case management, investigation, and legal support”, particularly in light of Article 21(4)(b)’s provision of a right to “adequate time and facilities for the preparation of his defence”.<sup>28</sup> *Amicus curiae* suggests the appointment of a *pro se* officer as a possible step in this regard.<sup>29</sup> *Amicus curiae* further informs the Appeals Chamber that with regard to the case files mentioned in the context of Mr. Krajišnik’s request for an extension of time, these case files are due to be delivered to Mr. Krajišnik on 5 July 2007.<sup>30</sup> *Amicus curiae* notes that these case files are substantial (including more than 150 boxes of papers, predominantly in English), and suggests that Mr. Krajišnik might need an extension of time in order to adequately review them.<sup>31</sup> *Amicus curiae* also disputes the Prosecution’s suggestion that the Rules do not allow for extraordinary status conferences and suggests that, pursuant to Rules 65ter(B) and 107, the Pre-Appeal Judge has the authority to convene such a status conference.<sup>32</sup> Finally, *amicus curiae* notes that the Krajišnik Request is Mr. Krajišnik’s first filing since the 11 May 2007 Decision and implies that this factor may be taken into account in considering any technical failure to comply with Practice Directions.<sup>33</sup>

12. On 28 July 2007, four days after receiving a B/C/S translation of the Prosecution Response, Mr. Krajišnik submitted a “Reply by the Accused to the Prosecution Response to Momčilo Krajišnik Request” (“Krajišnik Reply to Prosecution”).<sup>34</sup> Mr. Krajišnik acknowledges that the Krajišnik Request failed to comply with the Practice Directions in certain respects, but urges the Appeals Chamber to focus on the merits of his arguments.<sup>35</sup> As to the merits, he suggests that the Prosecution mistakenly focused only on Article 21(4)(b) of the Statute, while overlooking the

<sup>27</sup> *Id.*, para. 44.

<sup>28</sup> *Amicus Reply*, paras 9-10.

<sup>29</sup> *Id.*, para. 15.

<sup>30</sup> *Id.*, para. 17.

<sup>31</sup> *Id.*, paras 17-19.

<sup>32</sup> *Id.*, para. 20.

<sup>33</sup> *Id.*, paras 21-22.

<sup>34</sup> The English translation was filed on 21 August 2007. On 28 July 2007, Mr. Krajišnik submitted a Corrigendum to the Krajišnik Reply to Prosecution. The English translation of this Corrigendum was also filed on 21 August 2007.

<sup>35</sup> See Krajišnik Reply to Prosecution, p. 9.

guarantees in Article 21(1) and (2).<sup>36</sup> In Mr. Krajišnik's view, his waiver of the right to counsel means that he should be treated as an unreimbursed lead counsel but entitled to legal aid funding for advisors, a translator, and a case manager.<sup>37</sup> In his view, this will bring him closer to equal footing with Prosecution, *amicus curiae* in this case, and accuseds in other cases.<sup>38</sup> He further suggests that the preparation of his own appeal is more complicated than what the Prosecution must do, and therefore that he should receive greater funding than the Prosecution or at the very least receive funding at level III complexity.<sup>39</sup> Mr. Krajišnik reiterates some points made in the Krajišnik Request,<sup>40</sup> and also indicates that his initial request for translated documents refers not only to filings but also to certain witness statements.<sup>41</sup> He suggests, however, that there are "positive" developments on this front.<sup>42</sup> With regard to the issue of a time extension, Mr. Krajišnik references the quantity and unsorted state of the documents sent by prior counsel as a reason he needs a significant extension.<sup>43</sup> Regarding the extraordinary status conference, Mr. Krajišnik states that Rule 65bis (B) of the Rules does in fact permit such conferences, but notes that he "does not insist on holding an extraordinary status conference if the Appeals Chamber does not consider it necessary".<sup>44</sup> In closing, Mr. Krajišnik expresses his appreciation for the 11 May 2007 Decision; urges the Appeals Chamber to grant him the resources that he considers necessary to implement this decision; and states that he "feels bound to respect all the orders of the ... Chamber, and he will do so".<sup>45</sup>

### 3. The Registry Submission and the Reply

13. On 19 July 2007 and pursuant to Rule 33(B) of the Rules, the Registry filed the "Registry Submission on Momčilo Krajišnik's Request to Reverse the Decision of the Registry of 7 June 2007" ("Registry Submission"), with several confidential and *ex parte* Annexes. In this submission, the Registry urges that the Appeals Chamber dismiss the Krajišnik Request.

14. With regard to access, the Registry clarifies that it has not denied Mr. Krajišnik access to the particular individuals mentioned by Mr. Krajišnik. Mr. Krajišnik may communicate with his investigators and others in "accordance with standard procedures" at the United Nations Detention

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<sup>36</sup> *Id.*, para. 11.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, para. 11 and fns 8-9, 11.

<sup>39</sup> *Id.*, para. 15.

<sup>40</sup> *See id.*, paras 19-20, 23, 25.

<sup>41</sup> *Id.*, para. 21.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, para. 28.

<sup>44</sup> *Id.*, para. 29.

<sup>45</sup> *Id.*, p. 9.

Centre (UNDU).<sup>46</sup> Rather, the Registry has denied him *privileged* access to these individuals.<sup>47</sup> The Registry considers that privileged access to these individuals would damage “the security and good order of the UNDU” as well as pose risks to “the integrity of the appellate proceedings”.<sup>48</sup> The Registry states that it has offered Mr. Krajišnik the right to have privileged access to up to three legal associates, provided that these individuals meet certain “minimum qualification requirements” that the Registry deems “fundamental and necessary to safeguard the integrity of the proceedings and the security, and good order of the UNDU”.<sup>49</sup> As of the date of the Registry’s filing, no such legal associates have been designated.<sup>50</sup> The Registry notes that it has rejected Mr. Krajišnik’s attempt to designate Mr. Braschich as a legal associate in light of the fact that Mr. Braschich was found guilty of professional misconduct by the Tribunal’s Disciplinary Board.<sup>51</sup>

15. With regard to funding, the Registry makes detailed submissions. The Registry informs the Appeals Chamber that these submissions track ones made by the Registry in *Prosecutor v. Vojislav Šešelj*, where a similar question has arisen with regard to funding a self-represented accused’s defence.<sup>52</sup> To begin with, the Registry considers that it “has no authority to allocate money to a self-represented accused”.<sup>53</sup> The Registry considers that Article 24(d) of the Statute, Rule 45 of the Rules, and the Directive on the Assignment of Defence Counsel (IT/073/Rev.11) do not afford it with the authority to “disburse public funds to the Appellant, or to persons ultimately retained by the Appellant to assist him in his capacity as a self-represented accused outside the Tribunal’s legal aid system”.<sup>54</sup> In this regard, the Registry notes that “[t]here is no legal aid system known to the Registrar that offers the option to disburse funds directly or indirectly to a self-represented accused”.<sup>55</sup> The Registry considers that Article 21(4)(d)’s provision of the right to have “legal assistance assigned” to an accused relates solely to counsel and cannot apply to persons acting in a different capacity.<sup>56</sup> The Registry further considers that while Article 21(4)(b)’s requirement that an accused “have adequate time and facilities for the preparation of his defence” does necessitate certain technical and logistical support to self-represented accused (such as “access to certain office

<sup>46</sup> Registry Submission, para. 26.

<sup>47</sup> *Id.*, paras 26-27. The Registry implies that Mr. Krajišnik may have privileged communications with his investigators when a designated legal associate is also present. *See id.*, para. 21(d).

<sup>48</sup> *Id.*, para. 29.

<sup>49</sup> *Id.*, para. 22. Although the Registry Submission does not spell out what these qualification requirements are, the Appeals Chamber considers it appropriate to observe that the Registry has elsewhere defined these qualifications as “the basic qualification requirements of Rule 44 of the Rules”. *Id.*, Confidential and *Ex Parte* Annex 1, p. 1.

<sup>50</sup> *Id.*, para. 23.

<sup>51</sup> *Id.* Accordingly, Mr. Brashich did not *prima facie* fulfill the requirement of Rule 44(A)(iv), and the Registry declined to waive this requirement in light of the gravity of the professional misconduct at issue. *Id.*

<sup>52</sup> *Id.*, para. 34.

<sup>53</sup> *Id.*, para. 33.

<sup>54</sup> *Id.*, para. 35.

<sup>55</sup> *Id.*, para. 43.

<sup>56</sup> *Id.*, para. 39. Once counsel is assigned, the Registry may then fund support staff for assigned counsel pursuant to the Directive on the Assignment of Defense Counsel. *Id.*, para. 42.

facilities, library, documentation, technical assistance” and “conceivabl[y]” to the assignment of a Tribunal-paid “investigator and/or (an) expert(s), depending on the stage of the proceedings”), this clause does not cover reimbursement for “persons who draft legal submissions, analyse evidence and perform other functions normally performed by defence counsel”.<sup>57</sup> The Registry disputes Mr. Krajišnik’s claim that principles of equality require him to have resources equal to those of the Prosecution.<sup>58</sup> The Registry considers that Mr. Krajišnik is entitled only to procedural equality, not substantive equality, and that in any event Mr. Krajišnik’s decision to self-represent constitutes voluntary waiver of his right to legal assistance.<sup>59</sup> In light of its position, the Registry considers that it has no need to classify Mr. Krajišnik’s appeal based on a level of complexity, since the Registry only classifies cases where the legal aid system is in use.<sup>60</sup>

16. With regard to funding, the Registry further suggests that “the right to represent oneself and the right to have counsel assigned are not necessarily mutually incompatible”.<sup>61</sup> To the extent that these rights are not incompatible and the Tribunal can fund assistance for a self-represented accused, “then this, it is submitted, can only be done through the Tribunal’s legal aid system. That is, if the Appellant wants his assistants to be remunerated by the Tribunal, he must comply with the legal aid requirements”, such as by demonstrating partial or complete indigency and by having his proposed legal advisors meet the requirements of Rule 45 of the Rules.<sup>62</sup> The Registry emphasizes that any legal aid disbursed in this way must be done pursuant to the same conditions that apply to fully represented accused.<sup>63</sup>

17. As to a translator/case manager, the Registry states that “there is no negative decision of the Registry that could be reviewed by the Appeals Chamber at this stage”.<sup>64</sup> Regarding Mr. Karganović, the Registry states that it is in the process of assessing his acceptability and that in “the meantime, [Mr. Krajišnik] has not been denied the assistance of another translator”.<sup>65</sup> The Registry acknowledges that “a paid translator/interpreter may be provided by the Tribunal to assist” Mr. Krajišnik, but suggests that “it must be a person whose qualifications and conduct are acceptable to the Registry”.<sup>66</sup>

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<sup>57</sup> *Id.*, paras 52-54.

<sup>58</sup> *Id.*, para. 57.

<sup>59</sup> *Id.*, paras 57-58.

<sup>60</sup> *Id.*, para. 33.

<sup>61</sup> *Id.*, para. 64.

<sup>62</sup> *Id.*, paras 63, 66.

<sup>63</sup> *Id.*, para. 66.

<sup>64</sup> *Id.*, para. 24.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*, para. 55.



18. Finally, with regard to resources, the Registry explains that it has offered Mr. Krajišnik access to a privileged telephone and fax line for communication with designated legal associates and the ability to exchange electronic documents with such associates, but that these offers have not been implemented due to the absence of legal associates.<sup>67</sup> The Registry does not specifically address either Mr. Krajišnik's request for 24-hour access to a telephone, scanner, fax, and copier or his request for the provision of certain documents in Serbian.

19. On 13 August 2007, within four days of receiving a B/C/S translation of the Registry Submission, Mr. Krajišnik submitted a "Reply of the Accused to Registry Submission on Momčilo Krajišnik's Request" ("Krajišnik Reply to Registry").<sup>68</sup> With regard to access, Mr. Krajišnik reiterates his concerns that the Registry has not approved Mr. Braschich as a legal associate and Mr. Karganović as a translator.<sup>69</sup> He also reiterates his need for "unrestricted communication" with his investigators, although he accepts that meetings with these investigators can only take place in the company of individuals whom the Registry has granted privileged access.<sup>70</sup> In his view, standard methods of communication with investigators is not adequate because the mail takes a long time and because "other prisoners use the standard [telephone] line" which in any event is costly.<sup>71</sup> As to funding, Mr. Krajišnik considers that he is entitled to funds, although he is willing not to control the disbursement of these funds.<sup>72</sup> Mr. Krajišnik wants these funds to be paid to Mr. Dershowitz, an American lawyer whom he seeks to have involved in his case.<sup>73</sup> Mr. Krajišnik explains that "it matters to him whether these funds are at level III in order to secure funding for engaging Mr. Dershowitz".<sup>74</sup> Mr. Krajišnik emphasizes that he does not think that the right to self-representation is compatible with having the Registry assign him counsel.<sup>75</sup> He does suggest, however, that to the extent that the Registry requires him to act through legal associates, then the Registry should take part in remunerating such associates.<sup>76</sup> With regard to a translator, Mr. Krajišnik states that no translator has been offered to him.<sup>77</sup> Mr. Krajišnik indicates his willingness to work with a

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<sup>67</sup> *Id.*, paras 21, 31.

<sup>68</sup> The English translation was filed on 21 August 2007.

<sup>69</sup> Krajišnik Reply to Registry, paras 12-15. Mr. Krajišnik also makes reference to a third individual, Zdenko Tomanović. Since Mr. Tomanović was not mentioned in the Krajišnik Request, the Appeals Chamber disregards this reference as going beyond the scope of a reply.

<sup>70</sup> Krajišnik Reply to Registry, para. 11.

<sup>71</sup> *Id.*, paras 18-19.

<sup>72</sup> *Id.*, para. 33.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*, para. 27.

<sup>75</sup> *Id.*, para. 48.

<sup>76</sup> *Id.*, para. 47.

<sup>77</sup> *Id.*, para. 25.

translator other than the one he initially requested, at least until concerns about his preferred translator have been resolved.<sup>78</sup>

## **B. Discussion**

### 1. Preliminary Issues

20. Five preliminary issues merit addressing.

21. First, as the Prosecution Response observes, the Krajišnik Request fails to comply with certain provisions of the Practice Directions, including the requirements that where “filings of the parties refer to passages in a judgement, decision, transcript, exhibits or other authorities, they shall indicate precisely the date, exhibit number, page number and paragraph number of the text or exhibit referred to”<sup>79</sup> and that “[p]arties shall conduct a word count of any document they file which is subject to the length limitations set forth ... and shall include this information in the form ‘Word count: \_\_\_’ at the end of the document, before the signature line”.<sup>80</sup> The Appeals Chamber reminds Mr. Krajišnik of his obligation to comply with the Practice Directions and warns him that in the future the Appeals Chamber may sanction any noncompliance.<sup>81</sup> At the same time, the Appeals Chamber notes with approval that Mr. Krajišnik now appears aware of the obligations imposed by the Practice Directions,<sup>82</sup> and that both the Krajišnik Reply to Prosecution and the Krajišnik Reply to Registry demonstrate significant compliance with the provisions of the Practice Directions referenced above.

22. Second, the Appeals Chamber observes that there is some confusion over whether and in what way *amicus curiae* can file a “Reply” where Mr. Krajišnik has filed a motion and the Prosecution has filed a response. The Appeals Chamber provides guidance on this issue for the future in Part II of this decision, but in the present instance the Appeals Chamber accepts the *Amicus* Reply as validly filed.

23. Third, the Appeals Chamber notes that the Registry Submission was filed on 19 July 2007, just over one month after the filing of the Krajišnik Request. The Appeals Chamber acknowledges that the Rules and the Practice Directions do not specify time limits for the filing of Registry submissions pursuant to Rule 33(B). In the interests of ensuring that this case progresses as efficiently as possible, however, the Appeals Chamber requests that in the future the Registry make

<sup>78</sup> *Id.*

<sup>79</sup> Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings before the International Tribunal (IT/155/Rev. 3), 16 September 2005 (“Practice Direction on Procedure”), para. 17.

<sup>80</sup> Practice Direction on the Length of Briefs and Motions (IT/184/Rev.2), 16 September 2005, para. 8.

<sup>81</sup> *See, e.g.*, Practice Direction on Procedure, para. 20.

any Rule 33(B) submissions in response to motions brought by Mr. Krajišnik within ten days of the filing of the English translation of such motions.

24. Fourth, the Appeals Chamber notes that the Rules do not specify whether and under what circumstances a party is entitled to reply to Registry Submissions made pursuant to Rule 33(B).<sup>83</sup> The Appeals Chamber nonetheless considers that where a party seeks judicial review of a Registry determination, it is appropriate to allow that party a right of reply to a Rule 33(B) submission (with the timeline for the reply to be the same as the timeline for replies made to responses).<sup>84</sup> Accordingly, the Appeals Chamber accepts the Krajišnik Reply to Registry as validly filed.

25. Fifth, the Appeals Chamber notes that although the Registry Submission does not contain a word count, it appears to exceed the 3000 words allotted for motions, responses, and replies pursuant to paragraph 5 of the Practice Direction on the Length of Briefs and Motions. Of course, the Registry Submission does not need to comply with this word limit requirement, as it is neither a motion, a response, nor a reply, but rather a filing pursuant to Rule 33(B) of the Rules. Nonetheless, as Mr. Krajišnik has implied,<sup>85</sup> this may lead to a problematic disparity: while the Registry has no word limit, Mr. Krajišnik is bound by a word limit in replying to the Registry. The Appeals Chamber accordingly requests the Registry to include a word count in future Rule 33(B) submissions. The Appeals Chamber further informs Mr. Krajišnik that, in the future, where he is entitled to reply to such a submission (as discussed in the previous paragraph) and where this submission exceeds 3000 words, his reply may have a word count up to but not exceeding the word count of the submission.

## 2. Merits

26. The Appeals Chamber now turns to the merits of the Krajišnik Request.

### (a) Extraordinary Status Conference and Time Extension

27. To begin with, the Appeals Chamber dismisses the request for an extraordinary status conference. Such a conference is not required by the Rules, and the Appeals Chamber considers that it can adequately dispose of the Krajišnik Request on the basis of the written filings.<sup>86</sup>

<sup>82</sup> See Krajišnik Reply to Prosecution, p. 9.

<sup>83</sup> See Order Regarding Time Limits, 31 July 2007, p. 1 (before the Pre-Appeal Judge).

<sup>84</sup> See, e.g., *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. 6 (referencing an accused's reply to a filing by the Registry).

<sup>85</sup> See Krajišnik Reply to Registry, fn. 27.

<sup>86</sup> See, e.g., *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-Misc.1, Decision on Strugar's Request to Reopen Appeal Proceedings, 7 June 2007, para. 19.

28. The Appeals Chamber further dismisses Mr. Krajišnik's request for an extension of time to file his appeal brief.<sup>87</sup> In this respect, the Appeals Chamber notes that the seventy-five-day clock for Mr. Krajišnik to file his appeal brief did not start running until 24 July 2007, when Mr. Krajišnik received a B/C/S translation of the Trial Judgement.<sup>88</sup> Any possible complications that occurred prior to that date, such as the fact that the transfer of files from prior counsel to Mr. Krajišnik did not take place until 5 July 2007, are thus irrelevant to the question of whether a time extension is merited.<sup>89</sup> To the extent that Mr. Krajišnik claims that the complexity of his case merited additional time, the Appeals Chamber rejects this contention. Mr. Krajišnik has not shown how his appeal is so complex as to warrant a time extension. Moreover, the fact that Mr. Krajišnik has had the opportunity to conduct some preparations for his appeal brief during the nearly ten-month lag between the issuance of the Trial Judgement and the issuance of its B/C/S translation cuts against the claim that a further time extension is currently warranted.

(b) Registry Determinations and Conditions of Work

29. The Appeals Chamber now turns to Mr. Krajišnik's challenges involving the determinations of the Registry and his conditions of work. The Appeals Chamber notes several difficulties inherent in addressing these challenges. For one thing, Mr. Krajišnik raises a large number of challenges, and the procedural background to these challenges is not always clear. As an example, it is often difficult to tell when a specific decision of the Registry is being challenged and what that decision is. For another thing, the briefing has taken a long time, due in large part to the time needed for translation. Because the Registry and Mr. Krajišnik have continued to communicate during this period, the state of affairs now may be different from what it was when the Krajišnik Request was filed. Given the need for efficient resolution of the issues presented, the Appeals Chamber passes over some of these difficulties and prioritizes the provision of guidance to the parties and the Registry.

30. To the extent that Mr. Krajišnik seeks judicial review of an administrative determination, the standard of review is clear. The Appeals Chamber will quash this determination if "the Registrar has failed to comply with [relevant] legal requirements" or "if the Registrar has failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or if he has taken into account irrelevant material or failed to take into account relevant material, or if he has reached a conclusion which no sensible person who has properly

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<sup>87</sup> While issues regarding extensions of time limits could be left to the Pre-Appeal Judge, the Appeals Chamber considers it appropriate to deal with this particular request, since the request occurs in the context of a broader filing.

<sup>88</sup> See 11 May 2007 Decision, para. 15; Procès Verbal of 24 July 2007, filed 26 July 2007.

applied his mind to the issue could have reached”.<sup>90</sup> At least “in the absence of established unreasonableness”, there “can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled”.<sup>91</sup>

31. Most of the matters at issue relate to Article 21 of the Statute. This provides in relevant part that:

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.
- ...
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
  - ...
  - (b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
  - ...
  - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - ...
  - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
  - ...

Pursuant to Article 21(4)(d), Mr. Krajišnik has opted to represent himself. Today, the Appeals Chamber considers how this choice affects the application and/or implementation of other guarantees under Article 21 of the Statute.

(i) Access

32. The Appeals Chamber considers that there are four questions at issue in terms of access. First, there is the question of whom a self-represented accused may have privileged communications with. Second, there is the question of whom a self-represented accused may share confidential information with. Third, there is a question of quantity – namely, where a self-represented accused is confined to the UNDU and seeks the assistance of others in preparing his

<sup>89</sup> The Appeals Chamber also rejects Mr. Krajišnik’s and *amicus curiae*’s suggestions that the quantity of case files justifies an extension. Among other things, it is not clear why review of all these files is needed to mount an effective appeal.

<sup>90</sup> *Žigić* Decision, para. 13.

<sup>91</sup> *Id.* See also *Prosecutor v. Vidoje Blagojević & Dragan Jokić*, Case No. IT-02-60-T, Decision on Independent Counsel for Vidoje Blagojević’s Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 3 July 2003, paras 23-25; *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza’s Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar Relating to the Withdrawal of Co-Counsel, 23 November 2006, para. 9.

appeal, to what extent, if any, is he entitled to more opportunities to communicate with others that are accorded to other accused? Lastly, there is the question of the reasonableness of the Registry's decision as to a specific individual proposed by Mr. Krajišnik to be a designated legal associate. The Appeals Chamber considers these issues in turn.

33. With regard to privileged communication, the Appeals Chamber sees no error in the Registry's determination that Mr. Krajišnik may have privileged access to up to three designated legal associates (and presumably to team members who visit the accused in the company of these associates), but to no one else.<sup>92</sup> Privilege stems from the attorney-client relationship, as indicated in Article 21(4)(b) of the Statute and as set forth in Rule 97 of the Rules, which provides that all "communications between lawyer and client shall be regarded as privileged". Where an accused has opted to self-represent instead of to have counsel represent him, the basis for the privilege is removed. Mr. Krajišnik accordingly has no entitlement to privileged communications. Since the Registry has no obligation to provide him with privileged access to anyone, Mr. Krajišnik has no basis for objecting to the Registry's willingness to provide him with privileged access to up to three designated legal associates.<sup>93</sup>

34. With regard to confidential information, the Appeals Chamber generally sees no error in the Registry's determination that Mr. Krajišnik may only discuss confidential material with designated legal associates. This is a difficult issue. On the one hand, given Mr. Krajišnik's distance from the region and confinement in the UNDU, it is virtually impossible for him to personally undertake investigations relating to confidential material – investigations which may prove helpful in the preparation of his defence. If he cannot discuss confidential material with those outside the UNDU, then he has no mechanism for enabling such investigations.<sup>94</sup> On the other hand, if Mr. Krajišnik is permitted to share confidential information with anyone he considers to be part of his team, then the risks of leakage of confidential information or of inappropriate conduct of investigations are significantly higher than where investigations are conducted under the supervision of a legal professional. Such an approach could endanger the protection of witnesses and victims (protections so important that they are specifically referenced in Article 22 of the Statute). The Registry has sought to strike a balance between these competing interests by enabling Mr. Krajišnik to share confidential information only with designated legal associates, who in turn

<sup>92</sup> See Registry Submission, paras 21, 27-29.

<sup>93</sup> Although Mr. Krajišnik has no formal entitlement to privileged communications, the Appeals Chamber considers that the Registry's willingness to provide him with privileged access to up to three designated legal associates is a salutary practice.

<sup>94</sup> Since Mr. Krajišnik's case is at the appeal stage, there is presumably little (if any) need for outside investigations. Nonetheless, the Appeals Chamber cannot rule out *a priori* the possibility that some need exists, and so the Appeals Chamber addresses this issue. Cf. *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant

can provide the professional supervision needed to ensure appropriate use of the confidential information. The Appeals Chamber considers that this approach does indeed strike a reasonable balance and upholds it, subject to one caveat that will be discussed in paragraph 44.

35. The third issue is quantity of access. The Registry has authorized Mr. Krajišnik to have unlimited communications with any designated legal associates, and Mr. Krajišnik can contact all other persons (*e.g.*, investigators) in accordance with standard procedures at the UNDU. When designated legal associates exist, this approach is a reasonable one. The unlimited access to the designated legal associates would provide Mr. Krajišnik with a conduit for exchanging appropriate information with other members of his team where time limitations (or other limitations) imposed by UNDU standard procedures impede direct exchange. This in turn would satisfy the requirement pursuant to Article 21(4)(b) of the Statute that an accused have “adequate time and facilities for the preparation of his defence”.

36. If no legal associates have been designated, however, then the Appeals Chamber has some concerns about the Registry's approach. In this situation, pursuant to the Registry's approach a self-represented accused is limited only to the standard UNDU procedures for communication with the outside. If these procedures do not provide a self-represented accused with sufficient opportunity to exchange appropriate information with team members outside the UNDU during the preparation of his case, then this may amount to a lack of "adequate time and facilities for the preparation of his defence" in violation of Article 21(4)(b) of the Statute. The Appeals Chamber considers, however, that it lacks the necessary information to assess whether the standard procedures do indeed provide sufficient opportunity for communication with the outside during the preparation of his case. The Registry does not provide specifics about these procedures, and Mr. Krajišnik's allegations of limited time (and substantial expense) for telephone exchanges are vague. The Appeals Chamber thus does not know whether standard procedures permit Mr. Krajišnik's communication with his team for only a minute a day (which would seem insufficient), for several hours a day (which would seem more than sufficient), or for some other period of time. The Appeals Chamber accordingly dismisses this issue for want of specificity. Nonetheless, the Appeals Chamber informs the Registry that in the event that no legal associates are designated, the Registry should ensure that Mr. Krajišnik has adequate means of communicating with his defence team while he is preparing his appeal brief and his reply brief. If accommodations beyond those provided under standard UNDU procedures are thus necessary, the Appeals Chamber expresses its conviction that the Registry will

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Hassan Ngeze's Motions for Approval of Further Investigations on Specific Information Relating to the Additional Evidence of Potential Witnesses, 20 June 2006, para. 27.

provide such accommodations in the manner it deems most consistent with preserving order and security in the UNDU.

37. Finally, the Appeals Chamber sees no error in the Registry's decision that Mr. Deyan Brashich does not qualify as a designated legal associate. The Registry reasonably requires that designated legal associates meet the requirements of Rule 44 of the Rules. Rule 44(A)(iv) excludes any individual who has "been found guilty or otherwise disciplined in relevant disciplinary proceedings against him in a national or international forum, including proceedings pursuant to the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal, unless the Registrar deems that, in the circumstances, it would be disproportionate to exclude such counsel". Mr. Brashich has been found guilty of professional misconduct by the Disciplinary Board.<sup>95</sup> The Registry reasonably explains that it did not deem the exclusion of Mr. Brashich disproportional given the gravity of Mr. Brashich's misconduct.<sup>96</sup>

(ii) Funding

38. Two broad issues arise in relation to funding. First and most notably, there is the question of whether and to what extent Article 21 of the Statute requires that funding for legal aid be made available to an indigent accused who self-represents.<sup>97</sup> If so, subsidiary questions arise as to what conditions shall attach to this legal aid funding and who shall control the disbursement. Second, there is the question of what else the Registry must fund for an indigent self-represented accused and in what manner it must do so. The Appeals Chamber addresses these questions in turn.

39. The parties and the Registry take a range of positions on whether an indigent self-represented accused is entitled to funding for legal assistance. Mr. Krajišnik believes that he is entitled to such funding; the Prosecution argues that an accused who self-represents has no entitlement to legal aid; and the Registry considers it may be able to use its legal aid system to assign counsel to a self-represented accused. The Appeals Chamber also notes the recent decision of the Pre-Trial Judge in *Prosecutor v. Vojislav Šešelj*, which appears to contemplate that, under certain circumstances, the Registry might have to provide some legal aid funding for an indigent self-represented accused.<sup>98</sup>

<sup>95</sup> *In the Matter of Mr. Deyan Ranko Brashich, Attorney at Law from the United States*, Decision in the Appeal by the Registrar to the Disciplinary Board, 22 March 2007, para. 52.

<sup>96</sup> Registry Submission, para. 23.

<sup>97</sup> For brevity's sake, the Appeals Chamber uses the term "indigent" as a shorthand for "indigent or partially indigent".

<sup>98</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on the Financing [of] the Defence of the Accused, 30 July 2007 ("Šešelj Decision"), paras 63-64; see also *id.*, para. 55 (suggesting that legal associates should receive funding for their work drafting written submissions).



40. In the Appeals Chamber's view, Article 21(4)(d) of the Statute does not support the proposition that an accused who elects to self-represent is nonetheless entitled to legal aid. Article 21(4)(d) gives the accused the right "to defend himself in person or through legal assistance of his own choosing". We have held that these two options stand in "binary opposition".<sup>99</sup> An accused who chooses to self-represent is not entitled to legal assistance. Hence, he is not entitled to the subsidiary right mentioned later in Article 21(4)(d) to have legal assistance paid for by the Tribunal if he is indigent.<sup>100</sup>

41. The question nonetheless remains whether some other provision of the Statute or source of law requires the Registry to provide an indigent self-representing accused with funded legal aid. Mr. Krajišnik suggests that the principle of equality referenced in Article 21(1) of the Statute and the fair trial rights referenced in Article 21(2) of the Statute have this effect.<sup>101</sup> The Appeals Chamber does not find these arguments convincing. While Article 21(1) may require that accused in similar circumstances receive roughly comparable treatment, it does not require that an accused who opts for self-representation receive all the benefits held by an accused who opts for counsel. To the contrary, as "part of the choice to self-represent, Mr. Krajišnik must accept responsibility for the disadvantages this choice may bring".<sup>102</sup> Moreover, the Appeals Chamber considers that where an accused elects to self-represent, he is asserting his ability to conduct his case without legal assistance and thus Tribunal funding for legal aid for him can be presumed to be unnecessary to the conduct of a fair trial. To the extent that the accused lacks the ability to conduct his own case and his self-representation is thus "substantially and persistently obstructing the proper and expeditious conduct of his trial", then the remedy is restriction of his right to self-representation.<sup>103</sup> To allow an

<sup>99</sup> *Slobodan Milošević v. Prosecutor*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Counsel, 1 November 2004 ("*Milošević* Decision"), para 11. See also *Nahimana et al. v. Prosecutor*, Case No. ICTR-99-52-A, Scheduling Order for Appeals Hearing and Decision on Hassan Ngeze's Motion of 24 January 2006, 16 November 2006, p. 3.

<sup>100</sup> The Appeals Chamber notes that where stand-by or other counsel have been assigned to a self-represented accused, this has not been seen as complementary to the accused's right to self-represent but rather as an imposed limitation on the accused's right to self-represent. See *Milošević* Decision, para. 17 (describing the appointment of counsel for a self-represented accused as a restriction on the accused's right to self-represent). Similarly, an accused "is not entitled to *amicus curiae*", even where the relevant Chamber chooses to appoint *amicus curiae*. 11 May 2007 Decision, para. 18.

<sup>101</sup> The Appeals Chamber notes that while the *Šešelj* Decision does not clearly ground its holding that an indigent self-represented accused is entitled to funded legal aid in any particular provision of the Statute, it appears to draw on these same principles. See *Šešelj* Decision, paras 42, 49-50. The Appeals Chamber also notes that the Registry does not clearly explain the legal basis for its conclusion that counsel may be assigned to a self-represented accused pursuant to the legal aid program. See generally Registry Submission, paras 62-65.

<sup>102</sup> 11 May 2007 Decision, para. 17 (internal quotation marks and alteration omitted). See also *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the Amici Curiae against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, 20 January 2004, para. 19 ("There is no doubt that, by choosing to conduct his own defence, the Accused deprived himself of resources a well-equipped legal defence team could have provided. A defendant who decides to represent himself relinquishes many of the benefits associated with representation by counsel").

<sup>103</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR-73.3, Decision on Appeal against the Trial Chamber's Decision on Assignment of Counsel, 20 October 2006, para. 20. The Appeals Chamber also notes the possibility of

accused to self-represent and yet also to receive full legal aid funding from the Tribunal would, as the saying goes, let him have his cake and eat it too.

42. Finally, the Appeals Chamber considers whether Article 21(4)(b) of the Statute requires the Tribunal to provide some funding for the legal associates of self-represented accused. The Appeals Chamber agrees with the Registry that the term “facilities” in Article 21(4)(b) does not normally encompass legal assistance.<sup>104</sup> Nonetheless, the Appeals Chamber considers that in seeking otherwise to give effect to Article 21(4)(b) for a self-represented accused, the Registry has relied heavily on the concept of designated legal associates. To the extent that the Registry requires or encourages indigent self-representing accused to coordinate their defences through designated legal associates, it is appropriate for the Tribunal to provide some funding for such associates. Such funding should not be comparable to that paid to counsel for represented accused (particularly since work such as the drafting of written filings should be considered the responsibility of the self-representing accused), but nonetheless should adequately reimburse the legal associates for their coordinating work and for related legal consultation.<sup>105</sup> The Registry may impose additional criteria on designated legal associates who seek funding from the Tribunal (comparable to the Registry’s ability to require that Tribunal-funded counsel meet the requirements of Rule 45 of the Rules as well as of Rule 44 of the Rules). As always, the Registry should disburse any such payments in accordance with applicable UN Rules and Regulations.

43. The Appeals Chamber now turns to the question of what else the Registry must fund for an indigent self-represented accused pursuant to Article 21(4)(b) of the Statute. Mr. Krajišnik’s submissions on this front are vague, and the Appeals Chamber sees no reason for disturbing the Registry’s finding that Article 21(4)(b) requires it to provide “certain technical and logistical support” and “conceivabl[y]” the assignment of a Tribunal-paid “investigator and/or (an) expert(s), depending on the stage of the proceedings”.<sup>106</sup>

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alternative measures, such as the appointment of *amicus curiae*, in certain circumstances. See 11 May 2007 Decision, para. 18.

<sup>104</sup> See Registry Submission, paras 52-53. Accordingly, the Appeals Chamber agrees with the Registry’s view that it does not need to assign a level of complexity to a case where an accused is self-representing. The Registry’s designated levels of complexity may be reserved for cases where indigent accused assert the right to counsel.

<sup>105</sup> The Appeals Chamber considers that this conclusion, combined with the observations made in the next paragraph, are not necessarily incompatible with the point made in a United Nations Office of Legal Affairs memorandum and quoted in the *Šešelj* Decision at para 50 and fn. 71. The Appeals Chamber further observes that the quoted portions of this memorandum nowhere suggest that this funding should be comparable to that provided for a represented accused.

<sup>106</sup> Registry Submission, paras 52-54. In light of minimal briefing on the subject, the Appeals Chamber does not address under what circumstances, if any, the Registry should fund a case manager and/or *pro se* officer for an indigent accused who self-represents.

44. The Appeals Chamber further notes that all sides appear to agree that as an indigent self-represented accused, Mr. Krajišnik is entitled to Tribunal-funded translation assistance.<sup>107</sup> This does not mean, however, that Mr. Krajišnik is entitled to assistance from a translator/interpreter of his choosing, and the Appeals Chamber sees no error in the Registry's efforts to assess whether Mr. Karganović can acceptably fill the role. The Appeals Chamber notes, however, that should the Registry deem Mr. Karganović to be unacceptable, it must take steps to identify an acceptable translator/interpreter and to offer Mr. Krajišnik this person's services. Finally, the Appeals Chamber considers that in certain circumstances it might prove necessary for Mr. Krajišnik to be able to share confidential material with this translator/interpreter. For example, where no legal associate is designated and Mr. Krajišnik is working with the translator/interpreter, he may need to ask the translator/interpreter to translate a confidential document for him. Should such an eventuality arise, the Appeals Chamber considers that the Registry should take steps to accommodate it.

(iii) Resources

45. The Appeals Chamber declines to rule on Mr. Krajišnik's request for translated documents. Mr. Krajišnik currently receives translations of filings on an ongoing basis. To the extent that the Krajišnik Request seeks translations of additional documents, the Appeals Chamber concludes that this issue is now moot in light of the "positive" developments referenced in the Krajišnik Reply to Prosecution.<sup>108</sup>

46. As to Mr. Krajišnik's request for 24-hour access to a telephone, scanner, fax, and photocopier, the Appeals Chamber considers that the Registry's denial of such resources is reasonable. While in the absence of designated legal associates, some variation from standard UNDU procedures may be warranted to enable an accused adequate means of exchanging appropriate information with his defence team,<sup>109</sup> 24-hour access to such means of communication goes far beyond what is necessary to ensure the provision of adequate facilities.

## II. PROSECUTION MOTION

47. The Prosecution Motion requests that the Appeals Chamber clarify two issues. One issue involves the question of how time spent translating filings from B/C/S to an official language of the

<sup>107</sup> In light of this general agreement, the Appeals Chamber need not specifically determine whether this right is rooted in Article 21(4)(b) of the Statute, Article 21(4)(f) of the Statute, or in some other principle. While most of Mr. Krajišnik's translation needs may be met by existing translations of documents (such as the existing translation of the Trial Judgement into B/C/S), the Appeals Chamber considers that provision of an interpreter/translator is necessary to enable Mr. Krajišnik to access certain residual material that has not been translated.

<sup>108</sup> See Krajišnik Reply to Prosecution, para. 21.

Tribunal and *vice versa* affects the calculation of time limits set forth in the 11 May 2007 Decision.<sup>110</sup> This issue has subsequently been clarified by the Pre-Appeal Judge in a status conference<sup>111</sup> and thus will not be discussed further by the Appeals Chamber. The second issue involves the question of whether, upon Mr. Krajišnik filing a motion and the Prosecution filing a response, *amicus curiae* is entitled to file a reply and, if so, whether and within what time frame the Prosecution is allowed to respond to such a reply.<sup>112</sup> The Prosecution suggests that “there may be circumstances where the need for the Amicus Curiae to make a submission only arises out of the Prosecution’s response” and that the Prosecution should have a right of response where *amicus curiae* makes such a submission.<sup>113</sup>

48. On 16 July 2007, *amicus curiae* filed a “Response to Prosecution’s Motion for Clarification of the Order of Filings and the Calculation of the Time Limits for Filings” (“*Amicus Response*”). Like the Prosecution, *amicus curiae* considers that “there may be certain circumstances where the need for the amicus curiae to make a submission only arises out of the Prosecution’s response” and that the Prosecution should have a right of response to *amicus curiae* in such circumstances.<sup>114</sup> *Amicus curiae* further requests that *amicus curiae* have a right of reply to such a response.<sup>115</sup> *Amicus curiae* also suggests that if he “is going to step in at a late stage of a Motion” in the future, he could do so by way of a “Submission” rather than a “Reply”.<sup>116</sup> Finally, *amicus curiae* proposes an expedited time frame for such circumstances whereby *amicus curiae* would file any submission within four days of a Prosecution response to a motion by Mr. Krajišnik, the Prosecution would then have four days to respond to *amicus curiae*, and *amicus curiae* would then have four days to file a reply.<sup>117</sup>

49. On 20 July 2007, the Prosecution filed the “Prosecution Reply to Amicus Response to Motion for Clarification of the Order of Filings and the Calculation of the Time Limits for Filings” (“*Prosecution Reply*”). The Prosecution considers that where Mr. Krajišnik has filed a motion, the Prosecution has responded, and *amicus curiae* has filed a “reply”, then the Prosecution should have a right of response to this “reply” but no further filings should be authorized.<sup>118</sup> In the

<sup>109</sup> See para. 36 *supra* (identifying possible yardsticks).

<sup>110</sup> Prosecution Motion, paras 12-15.

<sup>111</sup> Transcript of Status Conference of 5 July 2007, pp. 102-104 (explaining that the “Prosecution’s clock for its response will not start running until it receives the English translation of Mr. Krajišnik’s appeal brief” and similarly that where Mr. Krajišnik must meet a deadline, that deadline applies to his B/C/S submission rather than to its English translation).

<sup>112</sup> Prosecution Motion, paras 4-11.

<sup>113</sup> *Id.*, paras 10-11.

<sup>114</sup> *Amicus Response*, paras 6, 8.

<sup>115</sup> *Id.*, para. 11.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*, para. 12.

<sup>118</sup> See *Prosecution Reply*, para. 3.

Prosecution's view, a further right of reply for *amicus curiae* would elongate the briefing cycle of motions unduly.<sup>119</sup> The Prosecution further objects to the suggestion that *amicus curiae* instead be allowed to make a "Submission" in relation to a Prosecution response to a motion by Mr. Krajišnik, as such a submission (and the subsequent response and reply) would "effectively double the filings on any given issue".<sup>120</sup> While the Prosecution recognizes that such doubling "may be a natural consequence" of the 11 May 2007 Decision, the Prosecution points out that this will result in nearly twice as much work for the Prosecution, as it may wish to respond to both Mr. Krajišnik and *amicus curiae*.<sup>121</sup> The Prosecution observes that in the event that the Appeals Chamber permits *amicus curiae* to make such submissions – and then permits the Prosecution to respond and *amicus curiae* to reply – the Prosecution would prefer a normal briefing schedule.<sup>122</sup> The Prosecution also notes that the expedited briefing schedule proposed by *amicus curiae* primarily encumbers the Prosecution rather than *amicus curiae*.<sup>123</sup>

50. Like the Prosecution and *amicus curiae*, the Appeals Chamber considers that there may be rare occasions where, in line with the mandate given to *amicus curiae* in the 11 May 2007 Decision, it is appropriate for *amicus curiae* to make a filing in relation to a Prosecution response to a motion brought by Mr. Krajišnik. The Appeals Chamber requests that, for clarity's sake, *amicus curiae* title such a submission as a "Submission" rather than as a "Reply" in the future. The Appeals Chamber also agrees with the Prosecution and *amicus curiae* that the Prosecution should have a right of response to such a submission. Finally, the Appeals Chamber agrees with *amicus curiae* that *amicus curiae* has a right to reply to any such response. The Appeals Chamber acknowledges that this approach may result in double the number of usual filings in relation to a particular motion, but considers that this is a consequence of the 11 May 2007 Decision.<sup>124</sup> Should *amicus curiae* wish to make a "Submission" upon viewing the Prosecution response to a motion by Mr. Krajišnik, then, in the absence of specific instructions from the Appeals Chamber or the Pre-Appeal Judge otherwise, *amicus curiae* should do so within 4 days of the Prosecution response. With regard to time frame for a Prosecution response to the Submission and for a reply from *amicus curiae*, the normal briefing schedule should be followed in the absence of specific instructions otherwise from the Appeals Chamber or the Pre-Appeal Judge.<sup>125</sup>

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.*, para. 4.

<sup>121</sup> *Id.*.

<sup>122</sup> *Id.*, para. 5.

<sup>123</sup> *Id.*, para. 6.

<sup>124</sup> Contrary to the Prosecution's suggestion, this approach is unlikely to elongate the briefing time in practice due to the concurrent time needed to translate the original Prosecution response into B/C/S and to then to translate into English the reply (if any) to this response submitted by Mr. Krajišnik.

<sup>125</sup> See 11 May 2007 Decision, paras 21-22.

### III. DISPOSITION

51. For the foregoing reasons, the Appeals Chamber **DISMISSES** the Krajišnik Request, but **REQUESTS** the Registry to ensure that it facilitates Mr. Krajišnik's self-representation in line with the reasoning given in this decision. The Appeals Chamber also **REQUESTS** the Registry in the future to make any Rule 33(B) submissions in response to motions brought by Mr. Krajišnik within ten days of the filing of the English translation of such motions. The Appeals Chamber further **REQUESTS** the Registry to include a word count with any such submission. Finally, as set out in paragraph 50, the Appeals Chamber also **GRANTS** the Prosecution Motion to the extent that clarification is sought with regard to the applicable procedure when *amicus curiae* makes a submission upon consideration of Prosecution response to a motion brought by Mr. Krajišnik.

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

Dated this 11th day of September 2007,  
At The Hague, The Netherlands.



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Fausto Pocar  
Presiding Judge

[Seal of the Tribunal]