



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

Case No. IT-04-74-A
Date: 13 May 2014
Original: English

IN THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Carmel Agius
Judge Patrick Robinson
Judge Fausto Pocar
Judge Liu Daqun

Registrar: Mr. John Hocking

Order of: 13 May 2014

PROSECUTOR

v.

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

PUBLIC

**ORDER ON THE REGISTRAR'S APPLICATION
PURSUANT TO RULE 45(E) OF THE RULES**

The Office of the Prosecutor:

Mr. Douglas Stringer
Mr. Mathias Marcussen

Counsel for the Defence:

Mr. Michael G. Karnavas and Ms. Suzana Tomanović for Mr. Jadranko Prlić
Ms. Senka Nožica and Mr. Karim A. A. Khan QC for Mr. Bruno Stojić
Mr. Slobodan Praljak
Ms. Vesna Alaburić and Mr. Guénaél Mettraux for Mr. Milivoj Petković
Ms. Dijana Tomašegović-Tomić and Mr. Dražen Plavec for Mr. Valentin Ćorić
Mr. Fahrudin Ibrišimović and Mr. Roger Sahota for Mr. Berislav Pušić

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 seised of the “Registrar’s Application for the Recovery of Legal Aid Funds”, filed publicly by the Registrar of the Tribunal (“Registrar”) with a confidential and *ex parte* Annex on 20 January 2014 (“Application”). Slobodan Praljak (“Praljak”) filed his response to the Application on 27 January 2014.¹ The Registrar filed his reply on 10 February 2014.²

I. BACKGROUND

2. On 13 September 2004, Praljak submitted a declaration of means to the Registry, pursuant to Article 7 of the Directive,³ requesting the assignment of Tribunal-paid counsel on the basis that he did not have sufficient means to remunerate counsel (“Request for Legal Aid”).⁴ On 17 June 2005, the Deputy Registrar of the Tribunal (“Deputy Registrar”) denied Praljak’s Request for Legal Aid, finding that, by refusing to provide the information necessary for the Registry to complete the inquiries into his ability to remunerate counsel, Praljak had failed to meet his burden of proof.⁵

3. On 5 July 2005, Praljak filed a motion before Trial Chamber I of the Tribunal (“Trial Chamber I”) to review the Deputy Registrar’s 2005 Decision on Assignment of Counsel.⁶ On 21 September 2005, Trial Chamber I upheld the Deputy Registrar’s 2005 Decision on Assignment of Counsel, finding that: (i) Praljak had not discharged his burden of proving that he was unable to remunerate counsel; (ii) Praljak had persistently refused to provide the information requested by the Registry; and (iii) the decision of the Registry was “reasonable”.⁷

¹ Slobodan Praljak’s Response to Registrar’s Application for the Recovery of Legal Aid Funds, 27 January 2014 (“Response”).

² Registrar’s Submissions Regarding Slobodan Praljak’s Response to the Registrar’s Application for the Recovery of Legal Aid Funds, 10 February 2014 (“Reply”).

³ Directive on the Assignment of Defence Counsel, IT/73/Rev. 11, 11 July 2006 (“Directive”).

⁴ See *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision, 22 August 2012 (public with confidential and *ex parte* Appendix I and public Appendix II) (“Registrar’s Decision on Means”), p. 1.

⁵ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision, 17 June 2005, (public with confidential and *ex parte* Appendix I) (“Deputy Registrar’s 2005 Decision on Assignment of Counsel”), pp. 2-3.

⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Accused Slobodan Praljak’s Motion for Review of the Deputy Registrar’s Decision Dated 17 June 2005 Regarding Accused’s Request for Assignment of Counsel, 5 July 2005 (confidential and *ex parte*).

⁷ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision on Slobodan Praljak’s Request for Review of the Deputy Registrar’s Decision Dated 17 June 2005 Regarding the Accused’s Request for Assignment of Counsel, 21 September 2005 (confidential and *ex parte*), paras 20-22, p. 10. A public redacted version was filed on 5 October 2005.

4. On 22 December 2005, the Registrar denied Praljak's request for reassessment of the Request for Legal Aid, finding that Praljak failed to provide the information necessary to complete a determination of indigence.⁸

5. On 5 January 2006, Praljak requested that Trial Chamber II of the Tribunal ("Trial Chamber II") review the Registrar's Decision of 22 December 2005, assign him defence counsel and provide him with "reasonable means necessary for (a reasonable) preparation of defence".⁹ On 15 February 2006, Trial Chamber II granted Praljak's Request for Review of the Registrar's Decision of 22 December 2005 and ordered the Registry to assign him counsel in the interests of justice.¹⁰ Furthermore, Trial Chamber II ordered Praljak to provide and substantiate answers to the Registry's and Trial Chamber II's questions concerning the financial means, if any, available to him.¹¹

6. On 6 March 2006, the Deputy Registrar decided, without prejudice to Rule 45(E) of the Rules of Procedure and Evidence of the Tribunal ("Rules") and Article 18 of the Directive, to assign Tribunal-paid counsel to Praljak.¹²

7. On 22 August 2012, however, the Registrar decided that Praljak was ineligible for the assignment of Tribunal-paid counsel and was able to fully remunerate counsel.¹³ The Registrar therefore withdrew the assignment of Praljak's counsel effective on the date of the rendering of the trial judgement in this case.¹⁴ The Registrar also decided that Praljak shall reimburse the Tribunal for all legal aid funds previously incurred by the Tribunal in relation to Praljak's defence, totalling €3,293,347.49.¹⁵

8. On 22 January 2013, Praljak moved Trial Chamber III of the Tribunal ("Trial Chamber III") to review the Registrar's Decision on Means and fully restore his right to legal aid for the entire duration of the proceedings against him, including the appellate stage.¹⁶ In the alternative, Praljak requested that the question of his means be remanded to the Registrar for reconsideration in the

⁸ See Registrar's Decision on Means, p. 2.

⁹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Request by Slobodan Praljak for the Review of an Opinion of the Registrar of the Tribunal and Request for Assignment of Defence Counsel, 12 January 2006 ("Request for Review of the Registrar's Decision of 22 December 2005"), paras 22, 24.

¹⁰ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision on Assignment of Defence Counsel, 15 February 2006 (public with confidential Annex) ("Decision on Assignment of Counsel"), para. 12, p. 7.

¹¹ Decision on Assignment of Defence Counsel, para. 13, p. 7.

¹² *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-PT, Decision, 7 March 2006 ("Deputy Registrar's Decision on Assignment of Counsel"), p. 2.

¹³ Registrar's Decision on Means, p. 6.

¹⁴ Registrar's Decision on Means, pp. 6-7.

¹⁵ Registrar's Decision on Means, pp. 6-7.

¹⁶ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Slobodan Praljak's Motion for Review of the Registrar's Decision with a Request to Exceed Word Limit, 22 January 2013 (confidential and *ex parte* with confidential and *ex parte* Annexes) ("Motion for Review"), para. 124. The English translation was filed on 1 February 2013.

interests of justice.¹⁷ On 24 January 2013, Trial Chamber III referred the Motion for Review to the President of the Tribunal (“President”).¹⁸

9. On 29 May 2013, Trial Chamber III rendered its judgement in this case,¹⁹ which triggered the withdrawal of Praljak’s Tribunal-paid counsel pursuant to the Registrar’s Decision on Means.²⁰ On the same day, however, the President issued an interim order staying the withdrawal of counsel pending resolution of the Motion for Review.²¹

10. On 28 June 2013, Praljak filed his notice of appeal against the Trial Judgement.²²

11. On 25 July 2013, the President granted the Motion for Review in part and reversed the Registrar’s Decision on Means insofar as it ordered Praljak to reimburse the Tribunal, finding that “the Registrar acted contrary to Rule 45(E) of the Rules by ordering Praljak to reimburse the Tribunal rather than applying to the relevant chamber for an order of contribution to recover the cost of providing counsel.”²³ The President denied the Motion for Review in all other respects, concluding that the Registrar’s Decision on Means was reasonable and in conformity with the applicable law.²⁴ The President also ordered the Registrar to provide Praljak with a detailed list of the legal aid costs sought to be recovered.²⁵

12. On 12 September 2013, Praljak sought review of the President’s Decision on Motion for Review.²⁶ Praljak argued that the President did not consider “any of the facts with which [he] challenged the Registrar’s inaccuracies”.²⁷ On 7 October 2013, the President denied Praljak’s Request for Further Review, on the grounds that: (i) Praljak did not adduce “a new fact that was not considered” in the President’s Decision on Motion for Review; and (ii) even if Praljak’s Request for Further Review were treated as a motion for reconsideration, Praljak “fail[ed] to identify a clear error of reasoning” in the President’s Decision on Motion for Review or “the existence of

¹⁷ Motion for Review, para. 125.

¹⁸ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision on Slobodan Praljak’s Motion for Review of the Registrar’s Decision of 22 August 2012, 24 January 2013 (confidential and *ex parte*), p. 4. The English translation was filed on 29 January 2013.

¹⁹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, *Jugement*, 29 May 2013 (“Trial Judgement”).

²⁰ Registrar’s Decision on Means, pp. 6-7.

²¹ *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Order Regarding Assignment of Defence Counsel to Slobodan Praljak, 29 May 2013 (confidential and *ex parte*), p. 1.

²² Slobodan Praljak’s Notice of Appeal, 28 June 2013.

²³ Decision on Slobodan Praljak’s Motion for Review of the Registrar’s Decision on Means, 25 July 2013 (confidential and *ex parte*) (“President’s Decision on Motion for Review”), paras 82-83. A public redacted version was filed on 28 August 2013.

²⁴ President’s Decision on Motion for Review, paras 38, 82-83.

²⁵ President’s Decision on Motion for Review, para. 83.

²⁶ Correspondence from Mr. Praljak, 12 September 2013 (confidential and *ex parte*) (“Request for Further Review”).

²⁷ Praljak’s Request for Further Review, p. 2.

circumstances that justif[ied] reconsideration in order to prevent an injustice, as he merely repeat[ed] previously rejected arguments”.²⁸

13. On 13 December 2013, the Registrar invited Praljak to voluntarily comply with his obligation to reimburse the Tribunal for the costs of his defence, either in full or by instalments, within 30 days from the receipt of the Registrar’s invitation.²⁹ The Registrar also provided Praljak with an itemization of the costs to be recovered, indicating that the total amount paid by the Tribunal for Praljak’s defence up to and including the issuance of the President’s Decision on Motion for Review on 25 July 2013 was €2,807,611.10.³⁰

II. APPLICABLE LAW

14. Rule 45(A) of the Rules provides that “[w]henver the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel.” Rule 45(E) of the Rules provides that “[w]here a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the Chamber may, on application by the Registrar, make an order of contribution to recover the cost of providing counsel”.

15. Article 11(A) of the Directive provides as follows:

(A) After examining the declaration of means referred to in Article 7 and any information obtained pursuant to Article 9, and having informed the suspect or accused of his findings with respect to those means, the Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel, and shall decide, providing reasons for his decision:

- (i) without prejudice to Article 19, to assign counsel from the list drawn up in accordance with Rule 45(B) of the Rules and Article 14; or
- (ii) without prejudice to Article 19, that the suspect or accused disposes of means to partially remunerate counsel and to assign counsel, in which case the decision shall indicate which costs shall be borne by the Tribunal; or
- (iii) not to grant the request for assignment of counsel.

16. Article 19(A) of the Directive states that “the Registrar may withdraw the assignment of counsel if information is obtained which establishes that the suspect or accused has sufficient means to remunerate counsel” and that in such cases, the Registrar may “recover the cost of providing counsel in accordance with Rule 45(E) of the Rules.”

²⁸ Decision on Slobodan Praljak’s Request for Further Review, 7 October 2013 (“Decision on Request for Further Review”), p. 2.

²⁹ Application, Annex (confidential and *ex parte*), pp. 1-3. *See also* Application, paras 7-8.

³⁰ Application, Annex (confidential and *ex parte*), pp. 1-2. *See also* Application, para. 7.

III. SUBMISSIONS OF THE PARTIES

17. The Registrar submits that Praljak is ineligible for legal aid because, after an investigation into his assets pursuant to Article 9 of the Directive, it was determined that he was able to contribute €6,456,980.00 to the costs of his defence in the proceedings against him.³¹ The Registrar further submits that this determination, which was subjected to judicial review, was fully upheld by the President.³² According to the Registrar, Praljak was given an opportunity to voluntarily refund the costs of his legal aid to the Tribunal, but did not respond to this offer.³³ The Registrar therefore requests the Appeals Chamber to make an order of contribution pursuant to Rule 45(E) of the Rules to Praljak in the amount of €2,807,611.10.³⁴

18. Praljak responds that, in light of the use of the word “may” in Rule 45(E) of the Rules, the Appeals Chamber has the discretion to decide whether or not an order of contribution should be issued.³⁵ He submits that, using that discretion in this case, the Appeals Chamber should deny the Registrar’s request, on the ground that Praljak lacks the means to remunerate his defence counsel or to reimburse the Tribunal for the costs of his defence.³⁶ Praljak argues in this regard that: (i) his assets are not liquid; (ii) all of his assets, apart from two, are legally owned by third persons; and (iii) the two assets he owns himself were incorrectly valued and he is unable to dispose of them.³⁷ Praljak also requests that the Registrar be ordered to provide him with a detailed monthly breakdown of the legal costs sought to be recovered, reflecting the payments made for each member of the defence team.³⁸

19. The Registrar replies that the Appeals Chamber, in exercising its discretion under Rule 45(E) of the Rules, cannot “[s]hield a fully solvent accused from his duty to reimburse the Tribunal”.³⁹ The Registrar adds that, even though Praljak’s means have been determined to be disposable and that determination was upheld by the President, Praljak refuses to reimburse the Tribunal.⁴⁰ Further, the Registrar contends that Praljak’s request for additional specification of the costs expended for his defence does not preclude and should not affect the issuance of an order of contribution by the Appeals Chamber.⁴¹ The Registrar thus moves the Appeals Chamber to issue an

³¹ Application, para. 12, referring to, *inter alia*, Registrar’s Decision on Means, President’s Decision on Motion for Review.

³² Application, paras 4, 12.

³³ Application, paras 7-9, 13, Annex (confidential and *ex parte*).

³⁴ Application, para. 14; Reply, paras 2, 7.

³⁵ Response, para. 6.

³⁶ Response, paras 6-8, 11. *See also* Response, paras 3-5, 7.

³⁷ Response, paras 3-5.

³⁸ Response, paras 10-11. *See also* Response, paras 8-9.

³⁹ Reply, para. 5. The Registrar submits that Praljak has failed to make any due effort to reimburse the Tribunal.

⁴⁰ Reply, paras 2-3, 7.

⁴¹ Reply, para. 6.

order of contribution pursuant to Rule 45(E) of the Rules and also undertakes to provide Praljak with an itemization of the costs sought to be recovered, consistent with Praljak's request.⁴²

IV. ANALYSIS

20. The Appeals Chamber recalls that a contribution order under Rule 45(E) of the Rules may be made if, after an accused is assigned Tribunal-paid counsel, the Registrar conducts an inquiry into the accused individual's means pursuant to Article 9 of the Directive and determines that the accused does not lack the means to remunerate counsel.⁴³ In this case, following an inquiry into Praljak's means, the Registrar has determined that, as of the date of his decision, Praljak was, in fact, able to contribute a minimum of €6,456,980.00 to his defence costs and accordingly was ineligible for legal aid pursuant to Article 11(A) of the Directive.⁴⁴ The President has upheld the Registrar's Decision on Means on the merits⁴⁵ and then rejected Praljak's Request for Further Review.⁴⁶ The Appeals Chamber, therefore, may issue a contribution order under Rule 45(E) of the Rules.

21. The arguments Praljak offers against the issuance of such an order only relate to the disposability and the value of his assets.⁴⁷ Praljak argues that "any order for reimbursement will be without purpose and without effect", as he does not have any available means.⁴⁸ These arguments, however, have been raised before and have been considered and rejected both by the Registrar and the President.⁴⁹ Praljak has had numerous opportunities in the past to discharge his burden to present evidence that he is unable to remunerate counsel, in accordance with Rule 45 of the Rules and Article 8 of the Directive.⁵⁰ Yet Praljak has consistently frustrated the Registrar's investigation into his means, refusing to provide information and to comment on information gathered by the Registrar when given the opportunity to do so.⁵¹ The Registrar eventually found Praljak solvent and able to contribute to his defence expenses, a finding affirmed by the President as reasonable.⁵² The Appeals Chamber is not at liberty to revisit the Registrar's and the President's findings as to

⁴² Reply, paras 2, 6-7.

⁴³ See *supra*, paras. 14, 16. See also *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5-A, Order on the Registrar's Application Pursuant to Rule 45(E) of the Rules, 21 March 2011, p. 3.

⁴⁴ Registrar's Decision on Means, p. 6.

⁴⁵ President's Decision on Motion for Review, paras 81, 83.

⁴⁶ Decision on Request for Further Review, p. 2.

⁴⁷ See *supra*, para. 18.

⁴⁸ Response, para. 7.

⁴⁹ See Registrar's Decision on Means, pp. 3-6; President's Decision on Motion for Review, paras 40-83.

⁵⁰ Decision on Assignment of Defence Counsel, para. 13; President's Decision on Motion for Review, para. 35.

⁵¹ Registrar's Decision on Means, pp. 2-3, Appendix I (confidential and *ex parte*); Decision on Assignment of Counsel, para. 13. See also President's Decision on Motion for Review, para. 36.

⁵² Registrar's Decision on Means, p. 6; President's Decision on Motion for Review, paras 81-82.

Praljak's ability to reimburse the Tribunal for the funds incurred for his defence.⁵³ Accordingly, Praljak's arguments are dismissed.

22. Other than raising issues that were considered and rejected in the past,⁵⁴ Praljak offers no valid reason why a contribution order should not be issued in his case. Absent any such reason, the Appeals Chamber concludes that an order of contribution should be issued in the present case and that the Registrar should be instructed to take all necessary measures to enforce it.

23. As to Praljak's request for a detailed list of the costs spent on his defence, the Appeals Chamber notes that in its Reply, the Registrar has already undertaken to provide Praljak with a monthly breakdown of the fees and other costs paid to each member of the defence team.⁵⁵ Therefore, Praljak's request for such a breakdown is moot.

V. DISPOSITION

24. In light of the foregoing and pursuant to Rules 45(E) and 107 of the Rules, the Appeals Chamber:

GRANTS the Registrar's Application;

ORDERS Praljak to reimburse the Tribunal the amount of €2,807,611.10 for the costs it sustained in providing him with legal aid. The total amount shall be paid to the Registrar within 90 days of the date of the notification of this order. Alternatively, Praljak is allowed, if he so wishes, to repay the total amount in monthly instalments over a three-year period, provided a minimum payment of 10% is received within 90 days of notification of this order and thereafter a monthly instalment of €70,190.28 is received by the first day of every month, starting with the month following the payment of the 10% instalment;

INSTRUCTS the Registrar to take the necessary measures to enforce this order of contribution; and

⁵³ The Appeals Chamber recalls that only the organ issuing a ruling possesses the inherent discretionary power to reconsider it (provided that certain conditions are met). *See, e.g., Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution Motion for Reconsideration of Filing Status of the Appeals Chamber's Decision on Vinko Pandurević's Provisional Release of 11 January 2012, 17 January 2012 (originally filed as confidential; made public per the Appeals Chamber's decision on 22 February 2012. *See Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Decision on Prosecution's Motion for Order Issuing Public Redacted Version of the Appeals Chamber's Reconsideration Decision of 17 January 2012, 22 February 2012, p. 2), p. 2 and references cited therein. In this case, the Appeals Chamber notes that Praljak has already sought further review of the President's Decision on Motion for Review, but his request was rejected by the President. *See* Decision on Request for Further Review, p. 2.

⁵⁴ Registrar's Decision on Means; President's Decision on Motion for Review, paras 40-83.

⁵⁵ *See supra*, para. 19.

DISMISSES as moot Praljak's request to be provided with a detailed list of monthly fees and other costs paid to each member of the defence team.

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

Dated this 13th day of May 2014
At The Hague
The Netherlands



Judge Theodor Meron
Presiding Judge

[Seal of the Tribunal]