

**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: IT-98-30/1-A
Date: 7 February 2003
Original: English**

IN THE APPEALS CHAMBER

**Before: Judge Mohamed Shahabuddeen, Presiding
Judge David Hunt
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana
Judge Theodor Meron**

Registrar: Mr Hans Holthuis

Decision of: 7 February 2003

PROSECUTOR

v

Miroslav KVOČKA, Mlađo RADIĆ, Zoran ŽIGIĆ & Dragoljub PRCAĆ

**DECISION ON REVIEW OF REGISTRAR'S DECISION
TO WITHDRAW LEGAL AID FROM ZORAN ŽIGIĆ**

Counsel for the Prosecutor

**Mr Christopher Staker
Ms Susan L Somers**

Defendant

Zoran Žigić (unrepresented)

The decision of the Appeals Chamber is divided into the following Sections:

- | | | |
|----|--|------------|
| 1. | The grant and withdrawal of legal aid | pars 1-5 |
| 2. | The proceedings before the Appeals Chamber | pars 6-11 |
| 3. | The nature of the proceedings before the reviewing Chamber | pars 12-14 |
| 4. | The Registrar's approach | par 15 |
| 5. | The extent to which Žigić's means had been enriched | pars 16-37 |
| | (i) <i>Purchase of a two roomed apartment</i> | pars 17-18 |
| | (ii) <i>Purchase of a three roomed apartment</i> | pars 19-21 |
| | (iii) <i>Purchase of and investment in the "Progres" business</i> | pars 22-24 |
| | (iv) <i>Renovation of family house</i> | pars 25-27 |
| | (v) <i>Purchase of three vehicles</i> | pars 28-30 |
| | (vi) <i>Purchase of three laptop computers</i> | pars 31-34 |
| | (vii) <i>Family expenses for travels to and lodging in The Hague</i> | pars 35-36 |
| | (viii) <i>Expenditure in the Detention United Nations</i> | par 37 |
| 6. | Specific complaints made by Žigić concerning these findings | pars 38-58 |
| | (i) <i>Right to be heard</i> | pars 39-41 |
| | (ii) <i>Accuracy of the Registrar's findings</i> | par 42 |
| | (iii) <i>Admissibility of the material relied upon</i> | par 43 |
| | (iv) <i>Alleged impropriety by the Registrar's investigator</i> | par 44 |
| | (v) <i>Relevance of the means of Žigić's wife and family</i> | pars 45-48 |
| | (vi) <i>Adequacy of the Registrar's reasons</i> | pars 49-53 |
| | (vii) <i>Notification of decision</i> | pars 54-58 |
| 7. | Sufficiency of the material supporting the Registrar's decision | pars 59-92 |
| | (a) <i>Use of Žigić's means to purchase or pay for the property</i> | pars 60-65 |
| | (b)(i) <i>Extent to which Žigić's means were enriched</i> | pars 66-84 |
| | (b)(ii) <i>The estimated remaining cost of Žigić's Defence</i> | pars 85-90 |
| 8. | Significance of errors upon Registrar's decision | pars 91-94 |
| 9. | Disposition | par 95 |

1 The grant and withdrawal of legal aid

1. The Tribunal's Statute provides that an accused is entitled to have legal assistance assigned to defend him where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it.¹ The provision of legal aid for this purpose is dealt with by the Directive on the Assignment of Defence Counsel ("Directive").² The Directive identifies the circumstances in which an accused will be accepted by the Registrar as lacking the means to remunerate counsel (and therefore entitled to legal aid),³ and it places the onus upon the accused of establishing that lack of means.⁴ He is required to make a declaration of his means,⁵ and the Registrar is permitted to inquire into his means.⁶ Various matters may be taken into account in determining that issue, including the means of the accused himself, and those of his spouse and of those with whom he habitually resides, the apparent lifestyle of the accused and his enjoyment of any property.⁷ The Directive provides that, where the Registrar refuses legal aid to the accused, the accused may seek from the Chamber before which he is due to appear a review of the Registrar's decision.⁸ That Chamber is given the power to rule that legal aid should be granted or, where it is satisfied that the accused has the means to remunerate counsel partially, to refer the matter again to the Registrar for him to determine the portion of the cost of having counsel for which the accused does not have the means to pay (and which the Tribunal must therefore pay).⁹

2. Once legal aid has been granted, it may be withdrawn by the Registrar if, *inter alia*, he is able to establish that, following the decision to grant legal aid, the accused has come into means which, had they been available at the time legal aid was requested, they would have caused him not to grant the request.¹⁰ Adopting the description used by the Registrar, such increase in the accused's means since the request was made for legal aid is hereafter described as the "enrichment" of those means. The Directive again provides that the accused may seek from the Chamber before which he is due to appear (or is appearing) a review of the Registrar's decision to withdraw legal

¹ Statute, Article 21.4(d).

² IT/73. This Directive has been amended on a number of occasions since Žigić entered custody, but not in any of its provisions relevant to these proceedings.

³ Directive, Article 6(A).

⁴ *Ibid*, Article 8(A).

⁵ *Ibid*, Article 7(B).

⁶ *Ibid*, Article 10(A).

⁷ *Ibid*, Article 8(B) & (C).

⁸ *Ibid*, Article 13(B).

⁹ *Ibid*, Article 13(B).

¹⁰ *Ibid*, Article 18(A).

aid.¹¹ That Chamber is given, *mutatis mutandis*, the same powers as a Chamber has on a review of the Registrar's decision to refuse legal aid.¹²

3. On 16 April 1998, Zoran Žigić ("Žigić") was transferred to the United Nations Detention Unit in The Hague ("Detention Unit"). On the same day, he submitted a declaration of means in which he stated that he was not employed, that he did not receive any family allowances or social benefits and that he did not own any movable or immovable property.¹³ On 28 April, the Registrar determined that Žigić had fulfilled the requirements for grant of legal aid as provided by the Directive, and he appointed Mr Simo Tosić as counsel.¹⁴ Mr Tosić was subsequently replaced by Mr Slobodan Stojanović as lead counsel, and Mr Tosić became co-counsel,¹⁵ before being eventually replaced by Mr Miodrag Deretić.¹⁶

4. Since 28 April 1998, the Registrar has granted legal aid to pay for a total of eight persons at different times as counsel, legal assistants or investigators to Žigić's Defence team.¹⁷ Substantial travel costs have also been authorised by the Registrar.¹⁸ From that date until legal aid was withdrawn, the total amount provided to Žigić by way of legal aid for his trial and for his appeal against conviction was (US)\$ 1,425,683.37.¹⁹

5. At the conclusion of his trial, Žigić was found guilty of persecution as a crime against humanity (involving murder, torture and beating, sexual assault and rape, harassment, humiliation and psychological abuse, and confinement in inhumane conditions) and of murder, torture and cruel treatment as violations of the laws or customs of war, and he was sentenced to imprisonment for twenty-five years.²⁰ He has appealed against his conviction and sentence,²¹ and that appeal is presently pending before the Appeals Chamber. On 8 July 2002, during the course of the preparation by Žigić for the hearing of his appeal, the Registrar withdrew legal aid from Žigić, on the basis that, since the decision to grant legal aid, Žigić had come into sufficient means to pay for the cost of his defence for the remainder of his appeal against conviction ("Impugned Decision").²²

¹¹ *Ibid*, Article 18(C), incorporating Article 13(B).

¹² *Ibid*, Article 18(C).

¹³ The declaration of means is Annex 1 to the Registrar's Decision withdrawing legal aid, of 8 July 2002 ("Impugned Decision").

¹⁴ Decision, 28 Apr 1998 (Annex IV to the Impugned Decision).

¹⁵ Decision, 21 Aug 2000 (Annex XLVII to the Impugned Decision).

¹⁶ *Ibid*.

¹⁷ Impugned Decision.

¹⁸ *Ibid*.

¹⁹ *Ibid*.

²⁰ *Prosecutor v Kvočka, Kos, Radić, Žigić & Prcać*, IT-98-30/1-T, Judgment, 2 Nov 2001, pars 764, 766.

²¹ Appellant's Brief of Argument – Defence for the Accused Zoran Žigić, 21 May 2002.

²² Decision, 8 July 2002.

2 The proceedings before the Appeals Chamber

6. On 29 July 2002, Žigić filed a “Motion to Freeze Proceeding Against Accused Zoran Žigić Until Clarification of His Defence Status”,²³ and on 6 August he filed a letter seeking a suspension of all appeal deadlines until the final determination of his motion. The prosecution responded to both applications on 8 August.²⁴ On 21 August, Žigić wrote again to the Appeals Chamber, advising it that he could not meet the deadlines set in relation to this Appeal. On 26 August, the time for filing a request for a review of the Registrar’s decision was extended until 18 September.²⁵ On 19 September, the time for filing such a request was further extended until 1 October.²⁶ On 30 September, Žigić filed in the BCS language what he has described as his “appeal”.²⁷ On 18 October, he filed a statement which includes a summary of his financial position.²⁸ On 30 October, the Registrar filed his “Response of the Registry to the Request of Zoran Žigić to Review the Decision of the Registrar Dated 8 July 2002” (“Registrar’s Response”). On 11 December, Žigić filed his “Reply to the Response of the Registry to the Request of Zoran Žigić of 30 September 2002” (“Reply”).²⁹

7. By letters of 8 August, 13 August and 15 August 2002, Žigić sought the appointment of counsel to represent him for various purposes, including the present proceedings by way of review of the Registrar’s decision. On 21 August, the Registrar determined that the investigation conducted by the Registry into the means of an accused was an “administrative fact-finding procedure”, and that the interests of justice did not in that context require legal aid to pay for counsel to be assigned to an accused in order to contest the factual findings of the Registrar.³⁰ The Registrar therefore denied the assignment of counsel to Žigić for the purpose of assisting him with his request to review the Impugned Decision. On 15 October, 16 October and 22 October, Žigić

²³ See also Modification of Motion to Freeze Proceeding against Accused Zoran Žigić until Clarification of his Defence Status, 23 Aug 2002.

²⁴ Prosecution Response to Motions of Zoran Žigić to Suspend Deadlines, 8 Aug 2002.

²⁵ Decision, 26 Aug 2002.

²⁶ Decision on Request for Extension of Time to Appeal, 19 Sept 2002.

²⁷ Appeal Against the Decision by the Registrar of the Tribunal of 8 July 2002, 30 Sept 2002 (“Request for Review”). An English version of that document was filed on 4 Oct 2002.

²⁸ Defendant Zoran Žigić’s Statement – Summary of Financial Changes from 16 April 1998 to 8 July 2002, undated but filed 18 Oct 2002 (“Žigić Statement”).

²⁹ Reply to the Response of the Registry to the Request of Zoran Žigić of 30 September 2002, 11 Dec 2002. The BCS version of this document was filed on 9 December 2002 as directed: Decision on Request by Zoran Žigić for Translation of Documents, 27 Nov 2002, par 8.

³⁰ The Registrar did provide Žigić with an English speaking legal assistant/investigator to assist him in the preparation and presentation of his Request for Review: par 10, *infra*.

again sought the assignment of counsel for that purpose.³¹ During a status conference held on 28 October, Žigić stated that he would not seek any further the assistance of counsel in relation to his request of review of the Impugned Decision.³²

8. A number of filings by Žigić in these present proceedings have concerned the translation of documents used in the Review. On 1 October 2002, Žigić filed his “Request for Providing All Material Translated in BCS”,³³ in which he requested that all material submitted to the Tribunal, and all decisions rendered by the Tribunal, from 8 July 2002 until the date of his motion, be translated into the BCS language and provided to him. On 3 October, an order was made that, as Žigić was now without legal representation and as he had to prepare his Request for a Review of the Impugned Decision by himself, he was entitled to receive in a language which he understands all the documents directly relating to these present proceedings, and that all relevant documents relating to these proceedings were to be translated into BCS and provided to him.³⁴

9. On 14 October 2002, Žigić filed a motion claiming that he was “entitled to have the accuracy of the English translation of the appeal verified”, and he requested that he be sent the English version of all material relating to these proceedings before it was provided to the Appeals Chamber “so that he may verify the accuracy of the translation”.³⁵ On 15 October, it was noted on behalf of the Appeals Chamber that Žigić had elected to proceed with his Request for Review with documents in the BCS language, and he had been permitted to conduct his Request for Review in the BCS language only because he had claimed that he was unable to read or to understand English. It was held that if, as the present motion suggested, Žigić *was* able to understand English sufficiently to check the accuracy of the translations from BCS into English, he would not be permitted to receive all the relevant documents in the BCS language as originally ordered.³⁶ His request for verification of translation was denied, but the original order for translation was left unaltered.³⁷

³¹ Žigić’s request of 15 October 2002, which had erroneously been addressed to the Appeals Chamber, was transmitted to the Registrar (Confidential Letter of Senior Legal Officer, 16 Oct 2002). On 22 October, Mr Stojanović expressed his willingness to represent the accused during the appellate proceedings on a *pro bono* basis (Letter from Mr Stojanović to the Registry, filed on 23 October 2002). On 23 October, the Registrar stated that he had no objection to Mr Stojanović continuing to represent Žigić on a *pro bono* basis in relation to his appeal against conviction.

³² Status conference, 28 Oct 2002, T 12777-12781.

³³ “BCS” is a reference to what has been designated within the Tribunal as the Bosnian/Croatian/Serbian language.

³⁴ Decision on Zoran Žigić’s Motion for Translation of Documents Pertaining to his Appeal, 3 Oct 2002.

³⁵ Request to Verify Accuracy of Translation, 14 Oct 2002.

³⁶ Decision on Zoran Žigić’s Request to Verify Accuracy of Translation, 15 Oct 2002.

³⁷ *Ibid.*

10. On 19 November 2002, Žigić filed a “Request for the Provision of Documents” in which he sought the provision of a translation in the BCS language of a number of decisions from various jurisdictions as well as other documents to which the Registrar had referred in his Response. Žigić claimed in that document that he “cannot write [his] rebuttal until [he has] been sent all those documents in the BCS language”. On 27 November, it was held that, although he is unrepresented, Žigić had been provided by the Registrar with an English speaking legal assistant/investigator to assist him in his Request for Review, who would be able to explain to him the material to which the Registrar had referred in his Response beyond the relevant documents already translated. His request was therefore denied.³⁸ On 4 December, Žigić filed a document informing the Appeals Chamber that he would proceed to file his Reply, which (as already stated) he did so on 11 December.³⁹

11. There were also a number of filings by Žigić relating to material in the possession of the Registrar. On 26 September 2002, Žigić filed a “Notification” in which he requested access to, *inter alia*, notes taken by Registry staff during the course of meetings they had had with him. On 27 September, the motion was denied in the absence of any indication that those meetings were relevant to the Review.⁴⁰ On 10 October, in order to complete the file to be used by the Appeals Chamber in the Review, the Registrar provided Žigić with the minutes of such meetings on 13 and 18 June 2002. On 10 October, Žigić filed a “Note on Importance of the Record”, in which he emphasised the importance to the Review of certain specific issues discussed during his meetings with the Registrar during 1999 and 2000.⁴¹ On 11 October, the Appeals Chamber, through its Senior Legal Officer, informed Žigić that the Registry would be asked to provide him with the notes of the meetings in which those issues were mentioned. On 14 October, the minutes of such meetings were provided to Žigić and filed.⁴²

³⁸ Decision on Request by Zoran Žigić for Translation of Documents, 27 Nov 2002.

³⁹ Information for Judge David Hunt, 4 Dec 2002.

⁴⁰ Decision on Zoran Žigić’s Notification, 27 Sept 2002.

⁴¹ In his Notice, Žigić claimed that these minutes contained evidence that he had warned representatives of the Registry that his then counsel, Mr Tosić, was doing nothing in his defence and was sending fictitious invoices to the Registry.

⁴² On 17 October 2002, Žigić filed an “Objection to Obstruction on Preparation of Defence”, in which he complained of the Registrar’s refusal to give him the Minutes of his meetings with Registry staff during 1999 and 2000. This complaint was held to be moot in the light of the disclosure which had been made by the Registrar in response to the request on behalf of the Appeals Chamber: Decision on Zoran Žigić’s Objection to Obstruction of Preparation of Defence, 28 Oct 2002.

3 The nature of the proceedings before the reviewing Chamber

12. The Registrar correctly described the inquiry which he conducts into the means of an accused pursuant to Article 10(A) of the Directive as an administrative fact-finding procedure.⁴³ It is not in any sense a trial. The burden upon the accused in the first instance to establish that he lacks the means to remunerate counsel, and upon the Registrar in the second instance to establish that the accused does have the means to do so, is not satisfaction beyond reasonable doubt, as in a criminal trial, but merely satisfaction that, more probably than not, what is asserted is true, or (as it is sometimes described) satisfaction on the balance of probabilities. Satisfaction that what is asserted is more probably true than not will in turn depend on the nature and the consequences of the matter to be proved. The more serious the matter asserted, or the more serious the consequences flowing from a particular finding, the more difficult it will be to satisfy the relevant tribunal that what is asserted is more probably true than not.

13. In the present case, the Registrar had to be satisfied that, more probably than not, Žigić now has the means to remunerate counsel for the remainder of his appeal against conviction, bearing in mind the serious consequences to Žigić if his legal aid is withdrawn. 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 judgment 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 is concerned initially with the propriety of the procedure by which Registrar reached the particular decision and the manner in which he reached it. The administrative decision will be quashed if the Registrar has failed to comply with the legal requirements of the Directive. This issue may in the particular case involve a consideration of the proper interpretation of the Directive. The administrative decision will also be quashed 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 applied his mind to the issue could have reached (the “unreasonableness” test). These issues may in the particular case involve, at least in part, a consideration of the sufficiency of the material before the Registrar, but (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. These standards for judicial review of administrative decisions rest on general principles of law derived from the principal legal systems.

⁴³ See par 7, *supra*. Downloaded from worldcourts.com. Use is subject to terms and conditions. See worldcourts.com/terms.htm

14. In the review, the accused bears the onus of persuasion. He must persuade the Chamber conducting the review (a) that an error of the nature described has occurred, and (b) that such error has significantly affected the Registrar's decision to his detriment. If the accused fails to persuade the Chamber of either of these matters, the Registrar's decision will be confirmed. If the accused has persuaded the Chamber of both matters, the Registrar's decision may be quashed and, if appropriate, the Chamber may also either rule that legal aid should be granted or, where it is satisfied that the accused has the means to remunerate counsel partially, refer the matter again to the Registrar for him to determine the portion of the cost of having counsel for which the accused does not have the means to pay.⁴⁴ In some cases, it may be appropriate for the Chamber simply to quash the decision and to direct the Registrar to reconsider his decision in the light of the Chamber's decision. It is clear, from the implicit restriction that only the Registrar may determine the *extent* to which the accused has the means partially to remunerate counsel, that the power of the Chamber to substitute its own decision for that of the Registrar is limited.

4 The Registrar's approach

15. In order to determine whether Žigić now does have the means to remunerate counsel for the remainder of his appeal against conviction, the Registrar proceeded in four stages:

First, the Registrar assessed the extent to which the means of Žigić had been enriched.

Secondly, he applied to his findings in relation to those means a formula which he has adopted in all these cases by which he determines the amount which Žigić could contribute to the cost of his appeal.⁴⁵

Thirdly, he assessed the likely cost of the remainder of Žigić's appeal against conviction.

Finally, as the amount which Žigić could contribute to the cost of his appeal exceeded the likely cost of the remainder of the appeal, he had the means to pay those costs, and the Registrar withdrew legal aid.

In considering the first of these stages, it will be necessary for the Appeals Chamber to consider the specific complaints made by Žigić concerning the Registrar's findings in relation to his means, and the sufficiency of the material supporting those findings.

⁴⁴ The Tribunal pays that portion: Articles 6(C), 13(B)(ii).

⁴⁵ The formula is stated and discussed in pars 77-79, *infra*.

5 The extent to which Žigić's means had been enriched

16. The Registrar found that the following events had taken place after his decision to grant legal aid had been made:

- (i) the purchase of a two roomed apartment in Zrenjanin, Federal Republic of Yugoslavia ("FRY");
- (ii) the purchase of a three roomed apartment in Zrenjanin;
- (iii) the purchase of and investment in a business named "Progres" in Hetin, FRY;
- (iv) the renovation of the family house in Prijedor, Bosnia and Herzegovina ("BiH");
- (v) the purchase of three motor vehicles;
- (vi) the purchase of three laptop computers;
- (vii) extensive family expenses for travels to and lodging in The Hague; and
- (viii) the expenditure in the Detention Unit.

It is necessary to refer to the material upon which the Registrar relied in relation to each one of these events in turn.

(i) Purchase of a two roomed apartment

17. The Registrar found that, on 6 November 1998, eight months after Žigić's transfer to the Detention Unit, Ms Jelena Lopičić (a Defence team legal assistant, acting under a power of attorney given to her by the accused) purchased on his behalf an apartment in Zrenjanin, FRY, for approximately € 19,500 (DM 38,000), but with an estimated value of € 20,116. In addition, Žigić agreed to pay both the taxes and the legal costs of approximately € 205 (DM 400).⁴⁶ Žigić explained to the Registrar that the funds used to purchase this apartment had come from various donations made by Serb associations abroad, the government of the Republika Srpska and the Serb Orthodox Church.

18. The Registrar based his findings concerning the purchase of this apartment in Zrenjanin on the following material:

- a contract of sale dated 6 November 1998, between the vendors (Radmila and Peter Sekač) and the purchaser (Žigić, represented by Ms Lopičić);⁴⁷

⁴⁶ Report on Financial Status of the Accused Zoran Žigić, dated 2 July 2002, but filed on 8 July 2002 ("Financial Report"), pars 3-4. See also list of appendices referred to in par 7 of the Financial Report.

⁴⁷ Financial Report, Appendix V. All Appendices are attached to the Financial Report.

- a “pre-contractual sales agreement”, dated 22 September 1998, between the same vendors and purchaser;⁴⁸
- a receipt dated 23 September 1998 for the payment of DM 400 made by Ms Lopičić to Dušan Grujić, acting as attorney for the vendors;⁴⁹
- notes of two interviews between the Registrar and Ms Lopičić dated respectively 10 and 15 June 2002, in which, although she denied it at first, she acknowledged that she had been given a power of attorney to represent Žigić in all legal matters in the FRY, and that she had purchased this apartment on behalf of Žigić with money given to her by former Defence counsel, Mr Tosić;⁵⁰
- a statement and the notes of an interview given by Žigić’s wife (Sanja Žigić), dated 10 June 2002, in which she stated that her husband owned an apartment located at Vlahovića 7/21 (Zrenjanin) where she had lived in the past and which he had purchased in 1998, but that she was unable to give any further information about the purchase of that apartment;⁵¹
- notes of interviews with Žigić dated 13 and 18 June 2002, in which he claimed to have purchased the apartment in question in June 1998 for DM 29,000;⁵²
- an amended declaration of means submitted by Žigić on 13 June 2002, in which he stated that he owned an apartment in Zrenjanin purchased in July 1998;⁵³
- photographs of the apartment and building at Veljka Vlahovića 7/21 in Zrenjanin, taken on 10 June 2002;⁵⁴ and
- a list of the money transfers to and from the account of Žigić in the Detention Unit, dated 18 June 2002.⁵⁵

(ii) Purchase of a three roomed apartment

19. The Registrar found that Mr Nikola Žigić, Žigić’s father, purchased a three roomed apartment on Bulevar Brigadira Rističa, in Zrenjanin, FRY, with an estimated value of € 37,580,

⁴⁸ *Ibid*, Appendix VI. The pre-contractual agreement indicated that the final purchase contract was to be made by the contracting parties within 40 days, par 6.

⁴⁹ Financial Report, Appendix VII.

⁵⁰ *Ibid*, Appendices VIII and IX. The price was DM 38,000 plus DM 1000/2000 to cover the fees and costs involved. This additional amount of DM 1000/2000 was not taken into account by the Registrar.

⁵¹ *Ibid*, Appendices X and XI.

⁵² *Ibid*, Appendix XII. The date mentioned by Žigić contradicts the date which appears on the pre-contractual sales agreement (22 September 1998 – Appendix VI) and that of the sales contract (6 November 1998 – Appendix V). The amount mentioned by Žigić (DM 29,000) is also contradicted by the amount of DM 38,000 which appears in the pre-contractual agreement of 23 September 1998 (Appendix VI) which is mentioned by Ms Lopičić as well (Appendix IX).

⁵³ *Ibid*, Appendix XIII.

⁵⁴ *Ibid*, Appendix XIV.

⁵⁵ *Ibid*, Appendix XV. See also analytical table of Žigić’s account at the Detention Unit (Appendix XXI).

although Mr Nikola Žigić claims to have paid only approximately € 25,650 for it.⁵⁶ The present wife of Žigić and their son are the current users of the apartment.⁵⁷ The Registrar concluded that the money used to buy this apartment had been provided by Žigić to his father, and that it was money which he had obtained from a fee splitting arrangement with his counsel.⁵⁸ In his amended declaration of means of 13 June 2002, Žigić stated that he owned only one residence, the two roomed flat in Zrenjanin purchased in 1998 already discussed, and that the three roomed apartment now in question had been purchased by his father with money which his father had received by way of a pension from Slovenia.⁵⁹

20. The Registrar based his findings in relation to the purchase of this apartment on the following material:

- a contract of sale between Šandor Hartig and Žigić's father in relation to a second, smaller apartment at Boška Buhe Street, dated 12 April 2000, for a price of 390,000 dinars, plus stamp duty, registration fee and property sales tax;⁶⁰
- a statement given by Žigić's wife, dated 10 June 2002, in which she said that she lived in the apartment located on Bulevar Brigadira Rističa owned by Žigić's father which he had purchased in 1998;⁶¹
- notes of an interview with Žigić's wife, dated 10 June 2002, in which she said (a) that she did not know where Žigić's father had obtained the money for the purchase of the apartment in which she lived, but stated that she assumed that the money had come from governmental help and/or donations from Serb associations, and (b) that, in order to avoid tax, the purchase of this apartment also involved an exchange of the smaller apartment in Boška Buhe Street, which had been purchased the same day;⁶²
- notes of interviews with Žigić, dated 13 and 18 June 2002, in which he said that his father had received a lump sum for his pension from Slovenia and that he had used that pension to purchase this apartment in July 1998;⁶³

⁵⁶ According to the Registrar's Financial Report, Mr Nikola Žigić purchased the apartment through a false contract in order to avoid payment of part of the taxes. This involved a fictitious purchase of an apartment on Boška Buhe Street in Zrenjanin on 12 April 2000, and then an exchange of that property for the apartment on Bulevar Brigadira Rističa (Financial Report, pars 9-10). See also Appendix XI (the statement of Žigić's wife).

⁵⁷ Financial Report, par 8 and appendices mentioned in par 14 of the Financial Report.

⁵⁸ Financial Report, pars 8-14.

⁵⁹ See Financial Report, Appendix XIII (amended declaration of means).

⁶⁰ Financial Report, Appendix XVI.

⁶¹ *Ibid*, Appendix X.

⁶² *Ibid*, Appendix XI. The Registrar interpreted this tax evasion arrangement as increasing the price in fact paid for the three roomed apartment in question to include the price paid for the second, smaller, apartment.

⁶³ *Ibid*, Appendix XII. The date mentioned by Žigić is contradicted by the date which appears on the contract of sale (12 April 2000 - Appendix XVI).

- notes of an interview with Ms Danka Stojković, a cousin of Žigić who lives in the street where the apartment in question is located, who stated that she had never been told how the apartment was purchased, but said that this apartment had recently been used by Žigić's daughter (from a previous marriage) and her family;⁶⁴
- photographs of the apartment and building at Bulevar Brigadira Rističa, taken on 10 June 2002;⁶⁵ and
- a list of the money transfers to and from the account of Žigić in the Detention Unit, dated 18 June 2002.⁶⁶

Also relevant is a document upon which the Registrar relied elsewhere in his Financial Report:

- notes of an interview with Žigić's mother (Mrs Savka Žigić), dated 13 June 2002, in which she stated that her husband had not yet received his pension from Slovenia.⁶⁷

21. The Registrar has also pointed out that Žigić's father was formerly a lorry driver and now a pensioner who receives a monthly income of approximately DM 148,⁶⁸ which would have been insufficient to fund the purchase of such an apartment. Neither Žigić's mother nor his wife was employed at the time of the purchase. In relation to another item in the Financial Report annexed to the Impugned Decision, the Registrar has emphasised the direct contradiction by Žigić's mother of his claim that his father had used a pension received from Slovenia to purchase it. The Registrar has also referred to the fact that, until 13 April 2000 when the apartment was purchased, Žigić had received the sum of f 24,158.70 in his account at the Detention Unit but had spent f 23,321.32 upon purchases within the Unit,⁶⁹ leaving a balance of f 837.38, an insufficient amount to purchase the apartment.

(iii) Purchase of and investment in the "Progres" business

22. The Registrar found that, on 21 July 2001, Žigić's wife and a relative of his (Ms Danka Stojković) commenced to operate a company named "Progres" in Hetin, which was involved in local and international trade in agricultural products, mediation and service, and that the money

⁶⁴ *Ibid*, Appendix XVII.

⁶⁵ *Ibid*, Appendix XVIII.

⁶⁶ *Ibid*, Appendix XV. See also the analytical table of the account of the accused at the Detention Unit (Appendix XXI).

⁶⁷ *Ibid*, Appendix XXII.

⁶⁸ This appears to have been a pension from Croatia and/or Republika Srpska (Appendix XXII). After the Registrar's inquiry commenced, Žigić's father claimed that his pension was DM 512 per month (Žigić Statement, Annex 14, D 13, p 2).

⁶⁹ The source of this money is said by Žigić to have been payments by friends and relatives and, in relation to small amounts only, by his counsel. The expenditure is said to have been for telephone cards to speak to his family and counsel, additional food and cigarettes. Žigić asserts that he has not spent any more than any other detainee (Request for Review, p 8 and Annex 4)

used to invest in this company had been obtained through a fee splitting arrangement between Žigić and his counsel. The company has two permanent employees, Žigić's wife and Ms Žužana Žigić (the sister-in-law of Ms Stojković). The estimated value of the business is € 7500, although Žigić's wife assessed its value as approximately € 1000-2000.⁷⁰ Žigić said, in his interview with the Registrar on 18 June 2002, that the business was started for an approximate DM 7000.⁷¹

23. The Registrar based his conclusion in relation to the investment in the business on the following material:

- a statement given by Žigić's wife dated 10 June 2002, in which she said that the business was commenced in 2001 with an investment of a couple of thousand German Marks, and that it is a partnership between herself and Ms Stojković in which she personally owned 51% and Ms Stojković owned 49%;⁷²
- notes of an interview with Ms Stojković, dated 10 June 2002, in which she said that she had been asked to become a partner in the company by Žigić's wife, but that her involvement was essentially formal as she had not invested any money in the project, having merely assisted with various logistical matters;⁷³
- notes of an interview with Žigić's wife, dated 10 June 2002, in which she said that she had started the company with money (90,000 dinars or approximately DM 3000) received from the Yugoslav government, and that its turn-over of about DM 200 was barely sufficient to cover her salary and that of one employee;⁷⁴
- notes of interviews with Žigić, dated 13 and 18 June 2002, when he said that the company was started with approximately DM 7000;⁷⁵
- notes of an interview with Ms Žužana Žigić, a relative of Žigić and an employee of the company, dated 11 June 2002, in which she said, referring to the building in which the company is located, that houses in Hetin generally sell for DM 2000 to DM 10,000;⁷⁶
- photographs of the company "Progres" in Hetin taken on 11 June 2002;⁷⁷
- a list of the money transfers to and from the account of Žigić in the Detention Unit, dated 18 June 2002;⁷⁸ and

⁷⁰ Financial Report, pars 15-17, and appendices relating to it mentioned at par 19.

⁷¹ *Ibid.*, Appendix XII.

⁷² *Ibid.*, Appendix X.

⁷³ *Ibid.*, Appendix XVII. She added that the building cost several thousand German Marks.

⁷⁴ *Ibid.*, Appendix XI. Mrs Žigić provided no material which would support her conclusion.

⁷⁵ *Ibid.*, Appendix XII. This figure contradicts the figure given by Žigić's wife.

⁷⁶ *Ibid.*, Appendix XIX. She said that the daily turnover was about € 100, which appears to contradict the assessment made by Žigić's wife on that point (Appendix XI).

⁷⁷ *Ibid.*, Appendix XX.

⁷⁸ *Ibid.*, Appendix XV.

- an analytical table of Žigić's account at the Detention Unit.⁷⁹

24. Apart from the fact that the estimates made by Žigić and his wife as to the amount of money invested in the company are different, the Registrar pointed out that, prior to 21 July 2001 when the company commenced to operate, both Žigić's wife and Ms Stojković were unemployed. He emphasised the conflict between Žigić's wife and Ms Stojković as to whether Ms Stojković had invested money in the project. He also pointed out that, prior to that time, Žigić had received the amount of € 25,895 in his account at the Detention Unit, of which he had spent € 25,709, the balance of € 1185.25 being insufficient to fund the company. The Registrar noted that Žigić had received from his wife during the ten months prior to the commencement of the company a total amount of € 2855.79.⁸⁰

(iv) Renovation of family house

25. Žigić's parents own a house in Prijedor, BiH, where Žigić had lived with his parents prior to his transfer to the Detention Unit. The Registrar assessed the value of the house originally as approximately € 15,000.⁸¹ It was completely renovated in 1999 and 2000, and it is now estimated by the Registrar to be worth approximately € 50,000.⁸² The Registrar found that the money used to renovate it had been obtained from Žigić through a fee splitting arrangement with his Defence team members.⁸³ The value of the renovations is assessed as € 35,000.⁸⁴ In his amended declaration of means, Žigić said that his father had received a lump sum for his pension from Slovenia which he used partly to cover the cost of renovation.⁸⁵

26. The findings of the Registrar in relation to the renovation of that house are based on the following material:

- notes of interviews with Žigić dated 13 and 18 June 2002, in which he stated that his father received a lump sum for his pension,⁸⁶ but Žigić did not repeat the claim made in his amended declaration of means that the renovation had been paid for with that money;⁸⁷

⁷⁹ *Ibid*, Appendix XXI.

⁸⁰ Financial Report, pars 17-18.

⁸¹ *Ibid*, par 20.

⁸² *Ibid*, par 54.

⁸³ *Ibid*, pars 20-24, and related appendices mentioned in par 25. The Registrar's estimate as to the value of the house before refurbishment was approximately € 15,000.

⁸⁴ Registrar's Response, p 15.

⁸⁵ Amended declaration of means (Financial Report, Appendix XIII).

⁸⁶ As stated above, this claim is contradicted by Žigić's mother, who stated on 13 June 2002 that her husband had not yet received his pension from Slovenia (Financial Report, Appendix XXII).

⁸⁷ Financial Report, Appendix XII.

- notes of an interview with Žigić's mother, dated 13 June 2002, in which she says that she and her husband had spent DM 9000 on the renovation of the house, and that the money had come from the Republika Srpska government;⁸⁸
- notes of an interview with Mr Davidović (a former Defence team investigator), dated 13 June 2002, in which he referred to a fee splitting arrangement between Žigić and his counsel, but said nothing about the renovation of the house;⁸⁹
- a letter from Mr Tosić to the Registrar, dated 16 May 1998, concerning the financial situation of Žigić and his family, in which Mr Tosić stated that Žigić's parents live in a small and "ruinous" house as part of a collective household;⁹⁰ and
- photographs of the family house at Prijedor taken on 13 June 2002.⁹¹

27. The Registrar noted that, at the time this renovation took place, Žigić's father was receiving a pension of only DM 148 per month.⁹² He contended that, with such a low income, it was unimaginable that Žigić's father would have been able to carry out such expensive renovations.⁹³ The Registrar further pointed out that the money which Žigić had received in his account at the Detention Unit had been spent by Žigić mainly at the Detention Unit, so that the money from that account could not have been used to fund this renovation. The Registrar also pointed out that Žigić's mother had stated on 13 June 2002 that her husband had not yet received his pension from Slovenia.⁹⁴ No documentation was provided by Žigić in relation to the issue of his father's pension.⁹⁵

(v) Purchase of three vehicles

28. The Registrar found that, between 1999 and 2000, Žigić and his close family members had purchased three motor vehicles with a current estimated value of at least € 10,000, and that the money used to purchase those vehicles was obtained through a fee splitting arrangement between Žigić and members of his Defence team.⁹⁶ A second hand Mercedes Benz 200 was purchased in 1999 and registered in the name of Žigić's daughter (Ms Nataša Žigić), who at the time of the purchase was 18 years old, single, unemployed and a dependant of her parents.⁹⁷ A second hand

⁸⁸ *Ibid*, Appendix XXII.

⁸⁹ *Ibid*, Appendix XXIII.

⁹⁰ *Ibid*, Appendix III.

⁹¹ *Ibid*, Appendix XXIV.

⁹² *Ibid*, par 24.

⁹³ Mr Nikola Žigić is alleged to have purchased an apartment in Bulevar Brigadira Ristića during the same period (namely, April 2000).

⁹⁴ Financial Report, Appendix XXII.

⁹⁵ *Ibid*, par 24.

⁹⁶ See Financial Report, pars 26-29, and related appendices mentioned in par 30.

⁹⁷ Financial Report, par 27.

Volkswagen Golf Mark III was purchased for approximately € 4000 for Žigić's father by Mr Davidović (a former Defence team investigator) with money provided by former Defence counsel, Mr Tosić. It is registered in the name of Žigić's father, who is the user of that vehicle. Sometime in late 1999 or early 2000, a Mazda 121 SDN was purchased for approximately € 4500. This car is registered in the name of Žigić's wife, who was at that time unemployed.⁹⁸ In response, Žigić stated that his family owned three cars, a Mazda purchased for about DM 9000 and used by his wife, a Golf owned and purchased by his father for DM 7000-8000 and a Mercedes which was purchased for DM 8000.⁹⁹

29. The Registrar based his findings in relation to the purchase of these three vehicles on the following material:

- notes of interviews with Žigić dated 13 and 18 June 2002, in which he stated that his family owns three cars, a Golf, a Mazda and a Mercedes, purchased for an approximate total of DM 24,000-25,000, although he does not say who purchased them or identify the source of the funds used to purchase them;¹⁰⁰
- notes of an interview with Žigić's mother, dated 13 June 2002, in which she said that she did not know any of the financial details of these purchases, but only that her granddaughter owns a Mercedes car and that her husband had purchased a Golf;¹⁰¹
- a statement made by Mr Davidović, dated 13 June 2002, in which he said that he purchased the Golf car for Žigić's parents with money he had received from Mr Tosić;¹⁰²
- notes of an interview with Mr Davidović, dated 13 June 2002, in which he refers to a fee splitting arrangement to which Žigić, Mr Tosić and himself were parties;¹⁰³
- notes of an interview with Žigić's wife, dated 10 June 2002, in which she makes no reference to the vehicle when identifying the family's assets;¹⁰⁴
- a request by the Registrar for assistance from the Liaison Officer of Republika Srpska for the Tribunal, dated 20 June 2000, concerning the ownership of the relevant vehicles;¹⁰⁵ and

⁹⁸ *Ibid*, par 29.

⁹⁹ *Ibid*, Appendix XIII.

¹⁰⁰ *Ibid*, Appendix XII.

¹⁰¹ *Ibid*, Appendix XXII.

¹⁰² *Ibid*, Appendix XXV.

¹⁰³ *Ibid*, Appendix XXIII.

¹⁰⁴ *Ibid*, Appendix XI.

¹⁰⁵ *Ibid*, Appendix XXVI.

- a certificate from the Ministry of the Interior Secretariat in Zrejanin, Traffic Police Department, dated 8 February 2001, confirming that the Mazda car is registered in the name of Žigić's wife.¹⁰⁶

30. The Registrar has pointed out that, at the time when the vehicle was purchased, Žigić's father was living on his monthly pension of DM 148, his house in Prijedor was being renovated and an apartment in Zrenjanin was being purchased in his name.¹⁰⁷

(vi) Purchase of three laptop computers

31. The Registrar found that Žigić had acquired at least three laptop computers since his transfer to the Detention Unit, and that all three had been purchased with money which Žigić had obtained through a fee splitting arrangement with his counsel.¹⁰⁸ In 1999, Ms Lopičić purchased a laptop computer in The Hague for Žigić for approximately € 2270, with money given to her by former Defence counsel, Mr Tosić.¹⁰⁹ On 27 April 2000, Žigić's wife purchased a notebook computer for her husband for € 2579.58. On 29 August 2000, a member of the Defence team gave a Compaq notebook computer to Žigić with an estimated value of € 2502.75.¹¹⁰ During his interviews with the Registrar, Žigić did not mention any of these computers, notwithstanding that he was asked to state what assets he owned. He did concede that Ms Lopičić had purchased a computer for him at some stage, but he said that she had made a mistake as to the language of the computer (buying a Dutch version), and that this computer was subsequently sold to Mr Stojanović for f 4000 in order to purchase another one. He mentioned the third computer only in May 2000, when the Registrar's inquiries had already commenced.

32. The Registrar based his findings in relation to the purchase of those laptops on the following material:

- notes of interviews with Žigić, dated 13 and 18 June 2002, in which he made no mention of these computers;¹¹¹

¹⁰⁶ *Ibid*, Appendix XXVII. This certificate shows that the Mazda car is registered as the property of the accused's wife.

¹⁰⁷ *Ibid*, par 28.

¹⁰⁸ *Ibid*, pars 31-34.

¹⁰⁹ *Ibid*, par 32.

¹¹⁰ *Ibid*, par 32.

¹¹¹ *Ibid*, Appendix XII. No mention is made of any laptop computers.

- notes of an interview with Ms Lopičić, dated 15 June 2002, in which, although she denied it at first, she acknowledged that sometime in 1999 in The Hague she had purchased a DM 5000 laptop computer for Žigić with money given to her by Mr Tosić;¹¹²
- notes of an interview with Mr Stojanović, dated 15 June 2002, in which he said that he had purchased an old laptop from Žigić for approximately DM 4000, and that he had purchased him a new one sometime in 2000;¹¹³
- an invoice to Žigić's wife from a shop called *Simmcity*, Antwerp, dated 27 April 2000, for the purchase of a *Mitac* Notebook laptop for f 5500, together with a letter from Žigić to the Registrar, dated 11 May 2000, which demonstrated that this laptop had been purchased for him by his wife and sent to him at the Detention Unit;¹¹⁴ and
- notes concerning the Compaq notebook computer remaining in Žigić's possession.¹¹⁵

33. The Registrar has pointed out that, during the relevant period, Žigić had spent a substantial part of the money from his account at the Detention Unit (a total of € 33,175.20) on consumable goods such as food, cigarettes and telephone cards, but that there is no reference in that account to the purchase of any of the three laptops which had been purchased and which had cost a total of € 7352.33.¹¹⁶ On the other hand, there is a credit shown in that account for the sum of f 4000, which is the amount Žigić claimed had been paid by Mr Stojanović for the purchase of the first computer and used by him for the purchase of the second computer. The Registrar also found that, at the time of her purchase of the third computer, Žigić's wife was unemployed.

34. Only one of the computers remains in the possession of Žigić (the Compaq notebook), which the Registrar has assessed as having a value of € 1000.¹¹⁷

(vii) Family expenses for travels to and lodging in The Hague

35. The Registrar found that Žigić's close relatives – including his father, mother, wife, son and two daughters – incurred substantial expenses (approximately € 19,409.63, excluding the cost of living in The Hague) for regular and frequent visits to him in The Hague during 1999-2002, which expenses were met by money obtained by Žigić through a fee splitting arrangement with his counsel.¹¹⁸ When asked during his interview with the Registrar on 13 June 2002 how he was able

¹¹² *Ibid*, Appendix IX.

¹¹³ *Ibid*, Appendix XXVIII.

¹¹⁴ *Ibid*, Appendix XXIX.

¹¹⁵ *Ibid*, Appendix XXX.

¹¹⁶ *Ibid*, par 33.

¹¹⁷ *Ibid*, par 54.

¹¹⁸ *Ibid*, pars 35-36.

to pay for, *inter alia*, the travel and expenses of members of his family, Žigić said that he and his wife had received financial help from Serb associations abroad, the government of the Republika Srpska and the Serb Orthodox Church, amounting to approximately DM 2000 per month.¹¹⁹ In his Request for Review, Žigić added that the Red Cross had paid for two visits by his parents, that he and his family had received money from the Republika Srpska government and that his relatives had been allowed to use an apartment rented by his counsel whilst they were in The Hague.¹²⁰

36. The findings of the Registrar in relation to the travel expenses of the family of Žigić were based on the following material:

- notes of interviews with Žigić, dated 13 and 18 June 2002, in which he stated that his counsel had helped him to pay for the travel costs of his family, and that counsel had also rented an apartment in The Hague which his family members were permitted to use when in The Hague;¹²¹
- notes of an interview with Žigić's wife, dated 10 June 2002, in which she said that she had received financial assistance from Defence counsel, from the government and from the Red Cross in order to travel to The Hague, and that she had been permitted to use an apartment rented by Mr Tosić and Mr Stojanović when she was in The Hague;¹²²
- notes of an interview with Mr Tosić, dated 12 June 2002, in which he stated that, during his assignment as lead counsel for the Defence, he gave substantial financial assistance and other favours to Žigić and his family, including meeting the cost of the visits of the Žigić's parents to The Hague;¹²³
- a statement given by Mr Tosić, dated 12 June 2002, in which he says that that he paid the travel and accommodation expenses of Žigić's family and his father and mother when visiting The Hague on several occasions, and that he gave them money to cover their living expenses there;¹²⁴ and
- a report from the Detention Unit of the number of visits received by Žigić during 1998-2002, showing the number of visits he received, the names of those visitors and the dates of those visits.¹²⁵

¹¹⁹ *Ibid*, Appendices XII-XIII. Žigić told the Registrar's representative that he received each month about DM 2000 from the Serbs living abroad, DM 600 from Republika Srpska and some "symbolic" help from the Serb Orthodox Church (Minutes of Meetings of 13 June and 18 June 2002, filed on 10 Oct 2002).

¹²⁰ Žigić Statement, p 7.

¹²¹ Financial Report, Appendix XII. Žigić estimated the total amount which he had received from counsel since 1998 as € 10,166 (Žigić Statement, Annex 03, pp 5-6).

¹²² *Ibid*, Appendix XI.

¹²³ *Ibid*, Appendix XXXI.

¹²⁴ *Ibid*, Appendix XXXII.

¹²⁵ *Ibid*, Appendix XXXIII.

(viii) Expenditure in the Detention Unit

37. Žigić has conceded that his expenditure in the Detention Unit over the period of 52 months assessed by the Registrar was € 33,175.20,¹²⁶ which is the figure upon which the Registrar relied.

6 Specific complaints made by Žigić concerning these findings

38. Before considering the sufficiency of the material before the Registrar upon which he based those conclusions, it is necessary to deal with the specific complaints made by Žigić concerning the factual merits of the Registrar's decision, the propriety of his procedures and the manner in which he reached that decision. The following complaints are made by Žigić:

- (i) The Registrar denied him the opportunity to be heard.
- (ii) The findings made by the Registrar concerning his means were erroneous.
- (iii) The material upon which the Registrar relied to make those findings did not constitute evidence in properly admissible form.
- (iv) The findings were based upon material which had been obtained by the Registrar's investigator improperly.
- (v) The means of his wife and relatives were irrelevant to the Registrar's inquiry.
- (vi) The Registrar's decision does not provide adequate reasons, as required by the Directive.
- (vii) The decision was not properly notified to him.

Each of these complaints will be examined in turn. When the Appeals Chamber turns to consider the sufficiency of the material upon which the Registrar concluded that, by reason of the factual findings already identified, Žigić had come into sufficient means to pay for the cost of his defence for the remainder of his appeal against conviction, it will examine a further specific complaint made by Žigić. That complaint was that the Registrar's assessment of the cost of his defence for the remainder of his appeal against conviction was arbitrary.

(i) Right to be heard

39. The Directive does not impose upon the Registrar an obligation to hold a formal hearing, and the nature of the inquiry to be conducted in accordance with the Directive does not attract such an obligation. Where, however, action pursuant to the Directive detrimental to an accused is contemplated, procedural fairness dictates that the accused be afforded the right to be heard.¹²⁷

¹²⁶ Žigić Statement, Annex 04, p 3.

¹²⁷ cf *Prosecutor v Jelisić*, IT-95-10-A, Judgment, 5 July 2001, pars 27-28.

Bearing in mind that the withdrawal of legal aid may well impact negatively upon the accused's ability to conduct his defence in the relevant criminal proceedings in the Tribunal, such a right entitles the accused to be given (a) notice of the allegations against him, (b) notice in reasonable detail of the nature of the material upon which the contemplated action is to be based, and (c) the opportunity to respond to that material.

40. The minutes of the meetings held with Žigić by the Registrar's representative demonstrate a sufficient compliance with that entitlement.¹²⁸ It is apparent from the minutes of those meetings that the Registrar's representative adequately explained to Žigić what was involved in the inquiry, and that, by the questions he asked, the representative gave Žigić a fair opportunity to respond fully to the material which the Registrar had obtained. Žigić was also recommended to seek legal advice from his assigned counsel concerning the Registrar's inquiry.¹²⁹

41. The Appeals Chamber does not accept that Žigić was denied his right to be heard.

(ii) Accuracy of the Registrar's findings

42. In his Request for Review, Žigić has put forward a number of arguments as to why the Registrar's findings are erroneous. He was given the opportunity to put those arguments to the Registrar's representative when he met with Žigić, but most of them were not put at that stage. No explanation has been given for not doing so at that stage. As already stated, this is not a rehearing, and a review of the Registrar's decision pursuant to Articles 13 and 18 is based upon the material which was placed before the Registrar. The Appeals Chamber is not satisfied that a departure from that general rule is justified in this case. This complaint is rejected. Those claims of factual error that were raised before the Registrar are discussed in the succeeding Sections of this decision.

(iii) Admissibility of the material relied upon

43. Žigić complains that several of the statements taken by the Registrar's investigator are unsigned, and therefore have no probative value.¹³⁰ This complaint is misconceived. Article 10 of the Directive requires the Registrar to act upon "information". How that information is given is for the Registrar to determine. He must, of course, take care that, when deciding something to the

¹²⁸ Minutes of Meetings of 13 June and 18 June 2002, filed on 10 October 2002.

¹²⁹ Registrar's Response, par 78. The Registrar also relied upon the provision of a legal assistant/investigator to assist Žigić in relation to his application for a review of the decision withdrawing legal aid as demonstrating procedural fairness in the inquiry which led to that decision (Registrar's Response, par 79), but assistance at the review stage is irrelevant to that issue in relation to the inquiry stage.

¹³⁰ Request for Review, pars 2, 3 *et seq.*, 2, 45-46, 3, 41.

detriment of an accused, the information upon which he bases his decision is reliable, but there is no requirement that the information be in the form of evidence which is admissible in a trial. The complaint is rejected.

(iv) *Alleged impropriety by the Registrar's investigator*

44. Žigić has claimed in general terms that the investigator used improper means to obtain information and that documents upon which reliance was placed were falsified, but the only specific complaint which he makes is that the investigation inconvenienced his family. No impropriety has been established, and the complaint is rejected.

(v) *Relevance of the means of Žigić's wife and family*

45. Žigić has objected to the Registrar taking into account in his decision the means of his wife and family. The Registrar relied upon Article 8(B), which provides:

In assessing such means [the means of the accused], account shall also be taken of the means of the spouse of a suspect or accused, as well as those of persons with whom he habitually resides.

Žigić has asserted that, since his transfer to the Detention Unit on 16 April 1998, he has habitually resided with fellow detainees, the personnel of the Detention Unit and his attorneys.¹³¹

46. It is inappropriate to describe a person in detention against whom the criminal proceedings have not yet been completed as habitually residing in detention. The clear intention of this provision in Article 8(B) is to permit the Registrar to take into account the means of those with whom an accused habitually resided before entering detention and/or those with whom he would be residing were he not in detention. For this purpose, the Registrar is entitled to take into account the information supplied by the accused in his declaration of means. In his declaration of means completed upon his arrival in the Detention Unit, Žigić identified as his "former permanent address" the address of his father. In his amended declaration dated 13 June 2002, Žigić identified the persons with whom he habitually resided as his wife and child, having remarried since being transferred to the Detention Unit. In neither case did he suggest that he habitually resided in the Detention Unit. Žigić married his present wife at the Detention Unit on 23 June 1999 (that is, two months after his transfer there).¹³² There is no suggestion that he was permanently residing with her prior to his transfer. It has not been demonstrated that it was not open to the Registrar to conclude that Žigić habitually resided with his father before being transferred to the Detention Unit.

¹³¹ *Ibid*, par 3.7.

¹³² Bibliography attached to Registrar's Response, which also states that their child was born on 15 September 2000.

47. In assessing the means of an accused person, the Registrar is in any event entitled to take into account the value of assets in the hands of other person where those assets have been purchased with means which the accused has freely disposed of.¹³³ The Registrar found that the purchase of the three roomed apartment by Žigić's father, the purchase of the business named "Progres" by Žigić's wife, the renovation of his parents' home, the purchase of the three motor vehicles, the purchase of the relevant laptop computer and the provision of travel to and lodging in The Hague for Žigić's wife and extended family were all funded by a fee splitting arrangement to which Žigić and his counsel were parties. Again, it has not been demonstrated that it was not open to the Registrar to conclude that these assets were purchased or paid for by means which Žigić had freely disposed of, and that the means of Žigić's wife and family upon which the Registrar relied were relevant to the assessment of Žigić's means.

48. The objection is overruled.

(vi) Adequacy of the Registrar's reasons

49. Žigić has complained that the Registrar's "entire document is confused, imprecise and vague and it contains a large number of documents that are not mentioned in the decision itself".¹³⁴ The Appeals Chamber has interpreted this complaint as being directed to the adequacy of the reasons which the Registrar gave for his decision.

50. The Directive requires the Registrar to give a reasoned decision when withdrawing legal aid.¹³⁵ Because administrative functions are different in kind from judicial functions, administrative decision makers are not usually required to give reasons for their decisions in the way courts are required. The imposition by the Directive of an obligation upon the Registrar to give a reasoned decision when withdrawing legal aid should not therefore be interpreted in the same way as the obligation upon a Chamber of the Tribunal to give reasons for its decision. What is necessary in relation to the Registrar's decision is that it makes apparent in its reasons that he has considered the issues raised by the accused and it reveals the evidence upon which he has based his conclusion.

51. The Impugned Decision given by the Registrar is a formal one, in which various matters are noted and considered and it concludes with his decision to discontinue the provision of legal aid to

¹³³ Article 8(B) also permits the Registrar to take into account "means of all kinds which [the accused] has direct or indirect enjoyment or freely disposes".

¹³⁴ Request for Review, unnumbered paragraph, following par 3.44.

¹³⁵ Directive, Article 18(B).

Žigić. This is the document which Žigić has described as the “Decision”. Annexed to that formal document is the “Report on the Financial Status of the Accused Zoran Žigić”, which has been designated “Financial Report” in this present decision. It contains a short Executive Summary, fourteen further pages in which the information obtained during the course of the Registrar’s inquiry is discussed, and 40 appendices which contain that information. These are the “large number of documents that are not mentioned in the Decision itself” to which Žigić refers, and they are mentioned in the Financial Report annexed to the Impugned Decision.

52. The main issue which the Registrar had to determine was whether the explanations given by Žigić for the financial capacity of his family and himself to pay for the identified assets or benefits destroyed the very strong inference arising from the information obtained that that capacity to pay came from means into which Žigić had come since legal aid had been granted. It has not been demonstrated that the discussion in the Financial Report of the information obtained in the course of the Registrar’s inquiry does not sufficiently indicate the issues raised by Žigić and the evidence which led the Registrar to reach the conclusion that Žigić had come into sufficient means to pay for the cost of his defence for the remainder of his appeal against conviction.

53. The complaint is rejected.

(vii) Notification of decision

54. Žigić complains that the Impugned Decision was improperly released to the media before he was notified of it, and that he did not receive a translation of the decision into the BCS language until ten days after it had been given.¹³⁶

55. The Directive requires the Registrar to notify both the accused person and his counsel of his decision to withdraw legal aid, and provides that the decision does not take effect until the date of such notification.¹³⁷ The Registry file discloses that a copy of the Impugned Decision was faxed to Mr Stojanović on the day it was given, and to Žigić at the Detention Unit on the following day. Both were, of course, in English and not in BCS, an unfortunate consequence of the inadequate resources available for the speedy translation of documents within the Tribunal. It was, however, the continuing duty of Mr Stojanović, who as counsel has had to work with English language documents throughout the proceedings, to protect Žigić’s interests by notifying him of that decision,

¹³⁶ Request for Review, unnumbered paragraph, following par 3.44.

¹³⁷ Directive, Article 18(B).
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notwithstanding the termination of his assignment as counsel.¹³⁸ A BCS version of the Impugned decision was faxed to Žigić at the Detention Unit on 17 July 2002, nine days after the decision had been given. Neither the Financial Report nor its appendices appear to have been translated into BCS until the Appeals Chamber ordered that all documents relevant to the Request for Review be translated.¹³⁹

56. The Tribunal's Statute provides that its working languages are English and French,¹⁴⁰ but it also provides that, in the determination of the charges upon which he is being tried, an accused is entitled to be informed of the nature and cause of the charge against him in a language he understands,¹⁴¹ and to the free assistance of an interpreter if he cannot understand or speak the language of the Tribunal.¹⁴² None of these provisions support a right in an accused person to a translation of a judgment or decision of the Tribunal into a language which he understands, but it is common practice for at least some allowance to be made in relation to the times within which various steps have to be taken in an appeal against such a judgment where it is necessary for an accused who does not speak the language in which the judgment has been issued to play a significant part in that step. It is therefore all the more important for an accused who does not speak the language in which a decision has been issued, and who is unrepresented, to have a translation of that decision in order to determine whether he should challenge that decision and to formulate the documents necessary for that purpose.

57. The delay in providing a BCS translation of the Impugned Decision, and the even further delay in providing such a translation of the Financial Report and its appendices, are thus unfortunate, but it has not been demonstrated that Žigić has suffered any prejudice thereby. Orders were made that he be supplied with translations, and the time within which he had to file his Request for Review was extended to enable him to consider the translations when he received him.

58. The complaint is rejected.

¹³⁸ *The Code of Professional Conduct for Counsel Appearing Before the International Tribunal* (IT/125 Rev 1), by Article 9 provides: "(C) Subject to leave from the Chamber, if representation by counsel is to be terminated or withdrawn, counsel shall not [withdraw] until a replacement counsel is engaged by the client or assigned by the Registrar, or the client has notified the Registrar in writing of his intention to conduct his own defence. (D) Upon termination or withdrawal of representation, counsel shall take steps to the extent reasonably practicable to protect the client's interests, such as giving sufficient notice to the client, surrendering papers and property to which the client or the Tribunal is entitled and refunding any advance payment of fee that has not been earned."

¹³⁹ Decision on Zoran Žigić's Motion for Translation of Documents Pertaining to his Appeal, 3 Oct 2002. See par 8, *supra*.

¹⁴⁰ Statute, Article 33.

¹⁴¹ *Ibid*, Article 21.4(a).

¹⁴² *Ibid*, Article 21.4(f).

7 Sufficiency of the material supporting the Registrar's factual conclusions

59. Those complaints made by Žigić concerning the propriety of the Registrar's procedures adopted in the inquiry into his means having now been dealt with, and rejected, the sufficiency of the material before the Registrar upon which he based the factual conclusions may now be considered. Two particular issues arise:

- (a) The sufficiency of the material to support the Registrar's finding that the various assets and expenditures which he has identified were purchased or paid for with means which Žigić had freely disposed of, so that they became relevant to the assessment of his means.
- (b) The sufficiency of the material upon which the Registrar concluded that, by reason of those factual findings, Žigić had come into sufficient means to pay for the cost of his defence for the remainder of his appeal against conviction. This second issue involves an examination of two figures:
 - (i) the extent to which Žigić's means had been enriched, and
 - (ii) the estimated cost of his defence for the remainder of his appeal against conviction.

(a) Use of Žigić's means to purchase or pay for the property

60. In relation to this finding, the material in the Registrar's possession, if accepted, established the following facts:

- (i) The two roomed apartment was purchased in Žigić's name with funds provided by Mr Tosić, one of his assigned counsel.
- (ii) Žigić was involved in a fee splitting arrangement with members of his Defence team, Mr Tosić and Mr Davidović, a Defence team investigator.
- (iii) The three roomed apartment was purchased by Žigić's father, despite the absence of any apparent means on his part to pay for it.
- (iv) The assertion by Žigić that his father had paid for the apartment from a pension which he had received was false.
- (v) The "Progres" business was purchased by Žigić's wife, despite the absence of any apparent means on her part to pay for it.
- (vi) The assertion by Žigić's wife that she owned only half of the business was false.
- (vii) The family home was extensively renovated by Žigić's father, despite the absence of any apparent means on his part to pay for those renovations.
- (viii) The assertion by Žigić that his father had paid for the renovations from a pension which he had received was false.

- (ix) One of the three motor vehicles was purchased in the name of Žigić's father by Mr Davidović with funds provided by Mr Tosić. The other two vehicles were purchased by members of Žigić's family, despite the absence of any apparent means on their part to pay for them.
- (x) One of the three laptop computers was purchased by one of Žigić's Defence team with funds provided by Mr Tosić. Another was purchased by Žigić's wife, despite the absence of any apparent means on her part to pay for it. The third laptop computer was supplied by another member of Žigić's Defence Team.
- (xi) The assertion by Žigić that the third laptop computer was purchased with the proceeds of the sale of the second computer was false, as those proceeds were deposited in Žigić's account at the Detention Unit.
- (xii) The costs of the travels to The Hague of Žigić's family were substantially met by Žigić's counsel.
- (xiii) The assertion by Žigić that he and his wife received approximately DM 2000 per month by way of financial help from Serb associations abroad, the government of Republika Srpska and the Serb Orthodox Church was not supported by any financial records, and was not disclosed to the Registrar until he commenced a further inquiry into Žigić's means.¹⁴³ Insofar as these organisations did contribute to Žigić's means, and is supported by financial records, it was fully spent by Žigić from his account in the Detention Unit but not in any way to fund either the cost of his family's travels or in acquiring any of the assets so far discussed.¹⁴⁴

61. It has not been demonstrated that it was not open to the Registrar to accept those facts as true, and to conclude from them that these various assets and expenditures were purchased or paid for with means which Žigić possessed, and which he had freely disposed of. It was clearly open to the Registrar to do so. Such assets and expenditures were accordingly relevant to an assessment of Žigić's means as amounting to an enrichment of those means since he was granted legal aid.

¹⁴³ Although the Registrar carries the burden of establishing that, as a result of an enrichment of his means since originally seeking legal aid, an accused does now have the means of remunerating counsel (par 12, *supra*), the Directive requires an accused to update his declaration of means at any time a change relevant to his original declaration of means occurs (Article 7(C)), and an accused who requests the assignment of counsel must produce evidence that he is unable to remunerate counsel (Article 8(A)).

¹⁴⁴ In the course of his inquiry, the Registrar ascertained that Žigić's account at the Detention Unit had deposits from the Republika Srpska government totalling € 4581,17; from Serb associations, priests and friends totalling € 8478,60; and from members of his Defence team totalling € 19,719,28, a grand total of € 32,779,05 (Financial Report, par 60).

62. It is important to emphasise that the Registrar was concerned only with the fact that Žigić's means had been enriched. The source from which those means were enriched was of no *direct* concern to the Registrar in these proceedings. The enrichment may result from winning the lottery, or the generosity of non-governmental organisations or private individuals who act from the purest of motives. It may also result from the proceeds of criminal or improper conduct on the part of others. The only sources from which an enrichment is necessarily immaterial are "any family or social benefits to which [the accused] may be entitled".¹⁴⁵ Another source which is relevant in the present case, but which is irrelevant to the assessment of the accused's enrichment, is the allowance of € 15.88 per week provided to detainees in the Detention Unit.¹⁴⁶ That amount, which is a modest one, is provided in the expectation that it will be fully but reasonably spent by an accused in the purchase of such things as cigarettes, additional food and telephone cards. It can no more be taken into account by way of an enrichment of an accused's means as could the value of his accommodation and sustenance in the Detention Centre.

63. In the present case, the Registrar found that the source of the enrichment was a fee splitting arrangement between Žigić and members of his Defence Team. It was necessary for him to do so only in order to establish that, in the absence of any apparent means on the part of Žigić's family to pay for the relevant assets purchased and expenditures made after Žigić began receiving legal aid, Žigić was more likely than not the source of the funds used. The Registrar correctly stated that the performance by Mr Tosić as counsel and Mr Davidović as investigator was itself irrelevant to the financial status of Žigić. His objective was "to assess the level of financial aid given to [Žigić] by his defence team", not "to examine [their] professional behaviour".¹⁴⁷

64. The source of the funds in Žigić's account at the Detention Unit, from which he has conceded that he expended € 33,175.20 over a period of 52 months, is stated in the Financial Report to be deposits from the Republika Srpska government totalling € 4581,17; from Serb associations, priests and friends totalling € 8478,60; and from members of his Defence team totalling € 19,719,28, a grand total of € 32,779,05, as well as the weekly allowance of € 15.88.¹⁴⁸ Such means were directly in the hands of Žigić, and were relevant to the assessment of his means.

¹⁴⁵ Directive, Article 8(B).

¹⁴⁶ The United Nations pays to its detainees the same amount paid to prisoners in the Dutch gaols, although without insisting upon the requirement in Dutch gaols that such prisoners work before becoming entitled to payment.

¹⁴⁷ Registrar's Response, par 54.

¹⁴⁸ See footnotes to par 60(xiii), *supra*.

65. The Appeals Chamber is accordingly satisfied that there was sufficient material before the Registrar to support the factual findings which he made in relation to each of the eight matters identified in par 16, *supra*.

(b)(i) Extent to which Žigić's means were enriched

66. The Registrar assessed the extent to which Žigić had "enriched" his means since being granted legal aid, by giving to each of the matters upon which he based his factual findings the following valuations:¹⁴⁹

(i)	Purchase of two room apartment by Žigić	€ 20,116
(ii)	Purchase of three room apartment by Žigić's father	37,580
(iii)	Purchase of "Progres" business by family members	7,500
(iv)	Renovation of family home	50,000
(v)	Purchase of three vehicles	10,000
(vi)	Purchase of laptops	1,000
(vii)	Family travel	19,409
(viii)	Expenditure in the Detention Unit	33,175

The Registrar stated that the total "enrichment" was € 178,280.¹⁵⁰ Žigić accepted some of these assessments, but challenged others by the provision of his own assessments to the Registrar.

67. The total summarised by the Registrar is the result of an apparent miscalculation (or, perhaps, a typographical error). It should be € 178,780, or € 500 more than stated by the Registrar. There are, however, other errors involved in the calculations by which he reached that total, and some estimates for which, although they were challenged by Žigić, the Registrar has not disclosed to the Appeals Chamber the material upon which they were based.

68. **(i) The two roomed apartment** Žigić has not challenged the valuation given to the two roomed apartment which was purchased in his name, but it is necessary to explain the basis of this valuation because it was also used by the Registrar to value the three roomed apartment (which Žigić does dispute). The two roomed apartment was purchased in November 1998 for DM 38,000 plus DM 400 for taxes, a total of DM 38,400. The apartment being 52.46 square metres (m²), this is the equivalent of DM 738 per square metre. The current valuation given by the Registrar assumed an increase in that figure since November 1998 from DM 738 to DM 750. The absence of any challenge by Žigić indicates that this was a reasonable approach.

¹⁴⁹ Financial Report, pars 54, 64.

¹⁵⁰ *Ibid*, par 64.

69. **(ii) The three roomed apartment** The Registrar then applied the same formula in valuing the three roomed apartment which was purchased in the name of Žigić's father. The material upon which the Registrar based his statement, in his Financial Report,¹⁵¹ that the size of the apartment was 98 m² has not been disclosed to the Appeals Chamber, but the measurement has not been challenged. The application of the same formula to that measurement produced the valuation stated. This has not been demonstrated to be an unreasonable approach.¹⁵²

70. **(iii) "Progres" business** The Registrar's estimate of € 7500 is disputed by Žigić, who says that it could not have been more than DM 7000 (or approximately € 3590).¹⁵³ The Registrar has not disclosed to the Appeals Chamber the material before him upon which he estimated the higher value. The Appeals Chamber is therefore unable to satisfy itself as to the sufficiency of that material so far as the difference (€ 3910) is concerned.

71. **(iv) Renovation of the family home** There is an error by the Registrar, in that he has based his estimate upon his current valuation of the house (€ 50,000) rather than upon the value of the renovations. As the Registrar accepted Žigić's estimate of the value of the house before the renovations as € 15,000,¹⁵⁴ the value of the renovations could reasonably have been assessed as the difference between the value of the house before and after the renovations. On the Registrar's figures, he should have assessed their value at € 35,000.¹⁵⁵ The Registrar's estimate of the current value after the renovation as € 50,000 is disputed by Žigić, who says (with supporting material) that its value is DM 84,137.38 (or approximately € 43,147). Again, the Registrar has not disclosed the material before him upon which he estimated the higher value, and the Appeals Chamber is unable to satisfy itself as to the sufficiency of that material so far as the difference (€ 6853) is concerned.¹⁵⁶

72. **(v) The three vehicles** The Registrar's estimate of € 10,000 is less than Žigić's own estimate of DM 24,000-25,000, and it is not challenged.

¹⁵¹ *Ibid*, par 9.

¹⁵² In his Response to Žigić's Request for Review, the Registrar has suggested that the value of the three roomed apartment should be increased by at least € 10,000 to take into account the value of wedding presents made to Žigić's wife, comprising DM 36,000 in cash plus a kitchen and bedroom furniture (Registrar's Response, Explanatory Notes, par 3). He obtained this information from a statement made by Žigić's wife, filed by Žigić in support of his Request for Review (Žigić Statement, Annex 14, D 11, D 19 and D 20). This material was not before the Registrar when he made his decision, and (as already stated) the present proceedings are not a rehearing (see pars 13, 42, *supra*). The Appeals Chamber is concerned only with the material which was before the Registrar when he made that decision. If the Registrar is obliged to reconsider the matter in a fresh inquiry, however, this material may be taken into account.

¹⁵³ Financial report, Appendix XII.

¹⁵⁴ Žigić Statement, p 13.

¹⁵⁵ This in fact the figure he placed upon the value of the renovations in the chart which forms part of his Response (Registrar's Response, p 15).

¹⁵⁶ This is the difference between € 50,000 and € 43,147.

73. **(vi) The laptop computers** The Registrar took into account only the value of the laptop computer remaining in Žigić's possession,¹⁵⁷ which he assessed at € 1000. There has been no challenge to that estimate.

74. **(vii) Family travel** The Registrar's estimates of the costs incurred by the family when visiting The Hague are set out in detail in the Financial Report.¹⁵⁸ They do not include the value of their accommodation, which was provided by Defence counsel. They were not challenged by Žigić during the Registrar's inquiry when he was given the opportunity of doing so, although he has sought to place additional material before the Appeals Chamber which to some limited extent does challenge it now. As stated earlier,¹⁵⁹ this is not a rehearing, and the complaint made is rejected.¹⁶⁰

75. **(viii) Expenditure at Detention Unit** The Registrar has accepted Žigić's concession that the figure of € 33,175 which he expended is correct. There is, however, an error by the Registrar, in that he has not excluded from that sum the allowance of € 15.88 paid to detainees, which is irrelevant to the assessment of an accused's enrichment.¹⁶¹ Over the period of 52 months to which Žigić's concession related, this allowance totals € 3578, and the valuation of these means should have been € 29,597.¹⁶²

76. The Appeals Chamber is accordingly satisfied that there was sufficient material before the Registrar to support his assessment of the extent to which Žigić's assets had been enriched only as to a total of € 100,433.

77. In determining whether any particular accused has sufficient means to contribute to the cost of his defence, the Registrar has adopted a formula which, he has asserted elsewhere,¹⁶³ is intended: –

¹⁵⁷ Financial Report, par 54.

¹⁵⁸ *Ibid*, par 35.

¹⁵⁹ Paragraphs 13, 42, *supra*.

¹⁶⁰ The additional material provided in support of the challenge before the Appeals Chamber (Žigić Statement, Annex 14, D 8) relates only to one visit by Žigić's parents in January 1999, and appears to be a conclusion drawn by a member of the Defence team from an unidentified source.

¹⁶¹ See par 62, *supra*.

¹⁶² In the end, the Registrar has not taken Žigić's expenditure in the Detention Unit into account: see par 80, *infra*.

¹⁶³ *Prosecutor v Martić*, IT-95-11-PT, Registry Comments in Trial Chamber's Order to Provide Information on the Registrar's Decision Dated 25 September 2002, 31 Oct 2002, par 5. The Trial Chamber dismissed an "appeal" from the Registrar's decision in that case requiring the accused to pay the costs of fifty investigative hours, holding that it was not satisfied that the decision based upon such a formula "violates or even touches upon the fundamental right of the accused to a fair trial and an effective defence": *Prosecutor v Martić*, Decision on the Appeal of the Defence Against Registry Decision Dated 25 September 2002, 3 Dec 2002, p 3.

[...] to ensure that partially indigent accused persons contribute payment for a certain amount of working hours commensurate with their income, which does not use up any and all means of their household. The Registry takes the view that a financial contribution of an accused to his defence must neither result in a loss of all liquid means and assets by the accused nor in a lack of support for dependants.

That formula (with all the limitations imposed by the software available) is as follows:

$$\frac{\text{CAV} + \frac{[(\text{NI} - \text{AE} \times \text{M}) \times \text{T}]}{4}}{\text{T}} = \text{D}$$

where –

CAV represents the value of the property available to the accused and to the members of his family with whom he habitually resides.

NI represents the monthly income of the accused and of the members of his family with whom he habitually resides.

AE represents the average monthly expenditure for a four person household, for which the Registrar relies upon official documents available from government within the FRY. The index includes accommodation and living costs.

M represents the number of members of the particular accused's household.

T represents the period in months over which it is calculated that legal aid will be required.

D represents the resulting disposable monthly income.

The percentage of the resulting disposable monthly income of the particular accused which is considered to be the reasonable contribution to make to the costs of his defence depends upon the following sliding scale:¹⁶⁴

DISPOSABLE MONTHLY INCOME	PERCENTAGE TO BE CONTRIBUTED
€ 0 > – < € 1000	10%
€ 1000 > – < € 5000	20%
€ 5000 > – < € 10,000	30%
€ 10,000 >	40%

78. It appears that the formula produces the required result in the following way:

First, the reasonable monthly expenditure to be permitted by the accused's family household is ascertained by dividing the readily available figure for a four person family's average expenditure by four and multiplying it by the number of members in the accused's family household.

¹⁶⁴ This table could perhaps be better expressed, in that it does not disclose which percentage would be applied to a disposable monthly income of precisely € 1000 or € 5000 or € 10,000.

Secondly, one part of the basic amount available to contribute to the accused's costs is ascertained by deducting from the monthly income of the accused and of the family with whom he habitually resides the figure ascertained in the first step.

Thirdly, the amount to which the figure ascertained in the second step will accumulate over the period during which legal aid will be required is ascertained by multiplying that figure by the number of months in that period.

Fourthly, the second part of the basic amount to contribute is ascertained by adding to the figure ascertained in the third step the value of the property available to the accused and his family.

Fifthly, the amount which is regarded as an appropriate disposable monthly income is ascertained by dividing the total of the two figures ascertained in the second and fourth steps by the number of months during which legal aid will be required.

Finally, the accused will be required to contribute the relevant percentage of his disposable monthly income according to the size of the figure ascertained in the fifth step. He will, for example, have to contribute 20% of that figure per month if that figure is between € 1000 and € 5000.

79. The consequence of the adoption of such a formula appears to be that, taking (for example) an accused for whom the figure ascertained in the fifth step is between € 1000 and € 5000, such an accused will be obliged to contribute, over the period during which legal aid is required, 20% of the value of the whole of his property and of the property of the family with whom he habitually resides.¹⁶⁵ There has been no challenge to the adoption by the Registrar of this formula, and the Appeals Chamber does not therefore need to express any opinion as to whether the formula is an appropriate one. Such an issue could only be decided after a great deal more information is provided.

80. When he came to apply that formula in the present case, the Registrar did not take into account either Žigić's expenditure at the Detention Centre, or his family's travel expenses.¹⁶⁶ No explanation for these omissions is apparent, but the omissions favour Žigić. The value of the assets of Žigić and his family was therefore € 121,196.¹⁶⁷ That figure becomes the CAV item in the formula. The error which had been made in relation to the valuation of the renovations to the family home has not been repeated,¹⁶⁸ but there remains the discrepancy of € 6863 in the sufficiency of the material before the Registrar in his assessment of the family home's value.¹⁶⁹

¹⁶⁵ The expression "disposable monthly *income*" is a convenient but not altogether appropriate one.

¹⁶⁶ Financial Report, pars 54, 64.

¹⁶⁷ Registrar's Response, par 58.

¹⁶⁸ See par 71, *supra*.

¹⁶⁹ Paragraph 71, *supra*.

There also remains the discrepancy of € 3910 in the sufficiency of the material before the Registrar in his assessment of the “Progres” business.¹⁷⁰

81. The items adopted for the purposes of the Registrar’s formula are as follows:¹⁷¹

CAV € 121,196.¹⁷²

NI € 1284.36, made up of the DM 2000 (€ 1022.58) per month which Žigić conceded that he and his wife received,¹⁷³ together with his father’s pension of € 261.78.¹⁷⁴

AB Instead of following the formula which requires the average expenditure for a four person household, the Registrar has relied upon an official document from the Federal Agency for Statistics of the FRY for the average expenditure of € 291 for a three person household in Serbia (where Žigić – apparently notionally – lives with his wife and child) and an official document from the Bureau of Statistics of Republika Srpska for the average expenditure of € 265 for a two person family in Bosnia and Herzegovina (where Žigić’s parents live).

M The Registrar has proceeded upon the basis that there are five members of Žigić’s family – Žigić himself, his wife and child and his parents.

T The period of ten months has been used upon the basis of an estimate given at a Status Conference on 28 October 2002.¹⁷⁵

The application of the formula to these figures produced a “disposable monthly income” of € 13,021.46. The sliding scale in relation to that figure thus requires Žigić to contribute 40% of that amount (€ 5208.58) each month towards the costs of his defence, or a total of € 52,085.80 for the period of ten months over which legal aid is required.¹⁷⁶

82. The adoption of the average expenditure of a three and a two person family, adding them together, and dividing the result by five, instead of following the usual formula of adopting the average expenditure of a four person family and dividing it by four, has not been explained, and the consequences of the alteration are unclear, although it may well have benefited Žigić by producing an inflated average figure.

83. Another problem arises in relation to the figure given for the pension received by Žigić’s father. The figure of DM 512 (€ 261.78) appears only in a document produced by Žigić in his Statement for the purposes of this Review,¹⁷⁷ and the document is dated 11 September 2002, or over two months after the Impugned Decision was given. So far as the material before the Appeals

¹⁷⁰ Paragraph 70, *supra*.

¹⁷¹ Registrar’s Response, par 59.

¹⁷² Paragraph 80, *supra*.

¹⁷³ Paragraph 35, *supra*.

¹⁷⁴ See par 83, *infra*.

¹⁷⁵ Transcript, 28 Oct 2002, pp 12,771-2.

¹⁷⁶ Paragraph 77, *supra*.

¹⁷⁷ Žigić Statement, Annex 14, D 13, p 2.

Chamber demonstrates, the only figure for the father's pension which the Registrar had before him at the time that decision was given was DM 148.¹⁷⁸ The provenance of the statement of the 11 September 2002 suggests that it is unlikely that the Registrar could have had it at the time of his decision. How it has become part of the material to which the formula has been applied has not been explained. The Appeals Chamber is therefore unable to satisfy itself as to the sufficiency of the material concerning the Progres business and the renovation of the family house upon which the Registrar acted in determining the extent to which the means of Žigić had been enriched *at the time when he made the Impugned Decision*.

84. There are therefore a number of areas in relation to the assessment of that enrichment in which the Appeals Chamber has not been satisfied that the material before the Registrar was sufficient. If those assessments for which it has not been shown that there was material before the Registrar supporting them are excluded, the formula produces a result which is overall less favourable to Žigić. For example, if the formula stated in par 77, *supra*, is applied to the corrected figures, it produces a total contribution which Žigić would have to make of € 42,273 rather than € 52,085.80.¹⁷⁹ The effect of this upon the Impugned Decision will be considered after the last part of the equation is considered, to which the Appeals Chamber now turns.

(b)(ii) *The estimated remaining cost of Žigić's defence*

85. In determining that Žigić has come into sufficient means to pay for the cost of his defence for the remainder of his appeal against conviction, the Registrar estimated that "approximately 300 counsel hours and 150 legal assistance working hours" would be required for that purpose, and that the cost of this representation, including counsel's travel costs, would be \$ 32,000.¹⁸⁰

86. Žigić complains that the assessment of 300 hours is arbitrary.¹⁸¹ Since legal aid has been withdrawn, there have been a number of proceedings which would have required the attention of counsel for Žigić – by a co-accused for the separation of his appeal as a result of the withdrawal of legal aid for Žigić, by Žigić himself for the filing of additional evidence in his appeal, his Reply Brief to the prosecution's Respondent's Brief, an objection to portion of his Reply Brief and a Status Conference. Once this review has been disposed of, there remains in the appeal against

¹⁷⁸ Paragraph 21, *supra*.

¹⁷⁹ The corrected figures are: **CAV** is € 100,433; **NI** is € 1098.60; **AE** is unchanged at € 459 because the Appeals Chamber has no knowledge of the appropriate average expenditure for a four person household, rather than the three plus two household which the Registrar adopted; **M** is unchanged at 5; **T** is also unchanged at 10. **D**, as the "disposable monthly income" becomes € 4227.26.

¹⁸⁰ Impugned Decision.

¹⁸¹ Request for Review, par 3.24.

conviction only one further Status Conference and the hearing of oral argument in the conviction appeal.

87. The Registrar has pointed out that legal aid for an appeal is granted by way of a total number of hours, based upon the level of complexity involved in that appeal. In the present case, a combined total of 1050 hours was allowed for lead counsel and co-counsel. At the time when legal aid was withdrawn, counsel had already been paid for 921 hours in relation to the appeal, and accordingly legal aid for only 129 counsel hours was still available for the remainder of the appeal. No application had been made for an extension of that combined total of hours prior to the withdrawal of legal aid. The Registrar assessed the relevant fees for those 129 hours and the appropriate expenses for counsel as totalling \$ 26,780,¹⁸² but allowed a total of \$ 32,000 to cover the relevant fees for the estimated 300 counsel hours and 150 legal assistance hours and for the appropriate expenses for counsel.¹⁸³

88. Žigić has complained that the 300 hours estimated by the Registrar have already been used up.¹⁸⁴ Counsel previously appearing for Žigić in his appeal against conviction, Mr Slobodan Stojanović (who has remained appearing for him in that appeal on a *pro bono* basis), has informed the Appeals Chamber that, since legal aid was withdrawn on 8 July and as at 24 September last, he had already spent 310 hours working on the appeal (without reference to the present review).¹⁸⁵ An examination of the documents already filed by Mr Stojanović on behalf of Žigić in the appeal against conviction, whatever their value may eventually prove to be, demonstrates an inability on the part of Mr Stojanović to keep to the issues involved and a grave tendency to be diverted into long and unhelpful discussions of matters which are of no relevance to the appeal proceedings. Counsel are not given a *carte blanche* to spend time on such matters and expect to be paid for the time taken on them. The statement of Mr Stojanović does not satisfy the Appeals Chamber that the Registrar's assessment of 300 counsel hours for the remainder of the appeal was unreasonable, and there is no other indication of unreasonableness in the material placed before the Appeals Chamber.

89. There is also, however, a problem with the assessment made by the Registrar of \$ 32,000 for the fees and expenses for the remainder of Žigić's appeal against conviction. It is apparent from the material which the Registrar has placed before the Appeals Chamber that this assessment was influenced to a significant extent by the fact that only 129 counsel hours remained of the original

¹⁸² Registrar's Response, pars 65-72.

¹⁸³ Impugned Decision.

¹⁸⁴ Request for Review, unnumbered paragraphs preceding par 3.1

¹⁸⁵ Statement of Zoran Žigić's Defence Counsel, 25 Sept 2002, pars 6-7.

grant of legal aid for the appeal against conviction.¹⁸⁶ A correct assessment of the cost of the “approximately 300 counsel hours and 150 legal assistance working hours” which the Registrar estimated would be required for the remainder of Žigić’s appeal against conviction would necessarily have to ignore the amount of legal aid already provided. It is the cost of the 300 counsel hours and 150 legal assistance working hours which must be assessed, not the cost of the 129 hours which remained in the original grant of legal aid. The assessment made by the Registrar itself demonstrates that, if an application had been made for an extension of combined total of hours, it would in all likelihood have had to be granted. In any event, this part of the equation must consider what the cost to Žigić *will* be if he is to remain represented, not what the cost *would* have been to the Registrar if legal aid were not withdrawn.

90. The material which the Registrar has placed before the Appeals Chamber enables it to make its own assessment of the cost to Žigić *will* be if he is to remain represented, at least on the legal aid fee scale:

Lead counsel, 150 hours at € 110 per hour	€ 16,500
Co-counsel, 150 hours at € 80 per hour	12,000
Legal assistant, 150 hours at € 25 per hour	3,750
Travel expenses ¹⁸⁷	4,880
Status Conference ¹⁸⁸	<u>1,020</u>
	€ 38,150 ¹⁸⁹

8 Significance of errors upon Registrar’s decision

91. In order to succeed upon a review of the Registrar’s decision in relation to legal aid, an accused must demonstrate not only that an error of the type previously described has occurred,¹⁹⁰ but also that such error has significantly affected the Registrar’s decision.¹⁹¹ The Appeals Chamber is satisfied that there have been a number of errors demonstrated in the Registrar’s findings of fact – it has not been shown that there was material before the Registrar to support some of the findings which he made, and there are errors in making some findings:

(i) the miscalculation of the total “enrichment” obtained;¹⁹²

¹⁸⁶ See par 87, *supra*.

¹⁸⁷ This is calculated in the Registrar’s Response, par 71.

¹⁸⁸ The remaining Status Conference should necessarily have been foreseen by the Registrar, as the likely date for the hearing of the appeal against conviction was well past the date for such a Status Conference as required by Rule 65*bis*.

¹⁸⁹ If the whole of the 300 counsel hours are calculated upon the basis that only lead counsel is retained, the total becomes € 42,650 in lieu of € 38,150.

¹⁹⁰ Paragraph 13, *supra*.

¹⁹¹ Paragraph 14, *supra*.

¹⁹² Paragraph 67, *supra*.

- (ii) the difference between the Registrar's estimate and Žigić's estimate of the "Progres" business;¹⁹³
- (iii) the valuation of the family home rather than of the renovations to that home;¹⁹⁴
- (iv) the inclusion in the expenditure at the Detention Unit of the allowance given to detainees by the United Nations;¹⁹⁵
- (v) the adoption of the average expenditure of a three and a two person family, adding them together and dividing by five, instead of the usual formula of adopting the average expenditure of a four person family and dividing it by four;¹⁹⁶
- (vi) the assessment of the pension paid to Žigić's father at DM 512 instead of DM 148;¹⁹⁷ and
- (vii) the assessment of the cost of the remainder of Žigić's appeal against conviction.¹⁹⁸

Some of these errors appear to have favoured Žigić (see, for example, the adoption of the average expenditure figures adopted), but the overall effect of the errors is to reduce the total amount of contributions which the Registrar determined Žigić could contribute to the cost of his appeal (from € 52,085.80 to € 42,273)¹⁹⁹ and to increase the estimate of the cost of the remainder of his appeal (from \$ 32,000 to \$ 38,150).²⁰⁰

92. If this review had been of a decision of the Registrar that legal aid would be granted only upon condition that Žigić contributed € 52,085.80 towards the costs of the remainder of his appeal, the errors made by the Registrar would clearly have significantly affected his decision, the decision would have had to be quashed and the Registrar would have been directed to reconsider his decision in the light of the Appeals Chamber's decision.

93. But that is not the issue in this review. This is a review of the Registrar's decision to withdraw legal aid completely, upon the basis that Žigić has come into sufficient means to pay for the cost of his defence for the remainder of his appeal against conviction. That decision was reached upon the basis that the amount which the Registrar determined that Žigić could contribute to the cost of his appeal (by the application of the formula already discussed) exceeded what he assessed to be the likely cost of the remainder of the appeal.²⁰¹ The errors made by the Registrar have not affected that decision – significantly or otherwise – because, even taking those errors into

¹⁹³ Paragraph 70, *supra*.

¹⁹⁴ Paragraph 71, *supra*.

¹⁹⁵ Paragraph 75, *supra*.

¹⁹⁶ Paragraph 82, *supra*.

¹⁹⁷ Paragraph 83, *supra*.

¹⁹⁸ Paragraph 89, *supra*.

¹⁹⁹ Paragraph 84, *supra*.

²⁰⁰ Paragraphs 87, 90, *supra*.

²⁰¹ Paragraph 15, *supra*.

account, the amount of € 42,273 which Žigić could contribute to the cost of his appeal (by the application of the same formula) still exceeds \$ 38,150, the likely cost of the remainder of the appeal.

94. There is accordingly no basis for interfering with the Registrar's decision, and Žigić has been unsuccessful in the review which he sought.

9 Disposition

95. The Appeals Chamber, having now reviewed the Impugned Decision of the Registrar, confirms that decision.

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

Dated this 7th day of February 2003,
At The Hague,
The Netherlands.

Judge Mohamed Shahabuddeen
Presiding

[Seal of the Tribunal]