



## Annex A

# Protocol on Indigence Assessment

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### Section 1 Purpose and definitions

1. This Protocol on Indigence Assessment ('Protocol') sets out in detail which considerations are relevant to the Registrar's determination of indigence of a suspect or Accused pursuant to Regulations 8 and 9 of the Legal Aid Regulations ('LAR').
2. For the purpose of this Protocol, the terms employed herein shall follow Regulation 2 LAR. In addition, the following definition shall apply:

Assets	The net resources owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person.
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## Section 2 Principles relevant to the indigence assessment

1. As set out in Regulation 8 LAR, in order to assess (full or partial) indigence, the Registrar shall
  - a. assess the means disposable to the suspect or Accused;
  - b. deduct from the disposable means the estimated living expenses of the suspect or Accused.  
The remaining amount shall represent the amount that is available for the suspect's or Accused's contribution to his or her legal representation before the Specialist Chambers.
2. The assessment of the suspect's or Accused's disposable means, estimated living expenses and the means that the suspect or Accused has at his or her disposal for his or her legal representation before the Specialist Chambers, shall, pursuant to Regulation 8 LAR, be carried out in accordance with this Protocol, by reference to the means of the suspect or Accused, his or her spouse, the Members of his or her household and/or any other financially associated person.
3. Means that are temporarily not disposable or not readily disposable shall be considered as non-disposable means for the purpose of this assessment.
4. In assessing indigence, statistical information gathered by the respective governmental or international statistical organizations operating in the State of residence and/or financial activity of the suspect or Accused shall be taken into account, insofar as available and up-to-date.
5. Benefits based on Kosovo Law No. 05/L-054 and any other contributions to the suspect's or Accused's legal representation or costs arising in relation to detention, if any, shall not be considered disposable means for the purposes of this assessment. Where the suspect or Accused is eligible to receive or has received such benefits, the suspect or Accused shall not be considered fully indigent, and those benefits shall be treated as contributions to the costs of the suspect's or Accused's legal representation.

## Section 3 Calculation of contribution

1. The contribution to be made by the suspect or Accused to the costs of his or her legal representation as referred to in Regulation 8(2) LAR and Section 2.1.a of this Protocol shall be calculated as follows:

$$DM - ELE = C$$

2. Whereby:
  - a. DM represents the suspect or Accused's disposable means as calculated in Sections 4 to 8 of this Protocol;
  - b. ELE represents the estimated living expenses of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person, as calculated in Section 10 of this Protocol;
  - c. C represents the means that the suspect or Accused has at his or her disposal to contribute to his or her legal representation before the Specialist Chambers, which equals the contribution to be made by the suspect or Accused to his or her legal representation.

## Section 4 Assets included in disposable means

Assets included in the disposable means as referred to in Section 2.1.a of this Protocol are:

- a. the equity in the principal (family) home that exceeds the reasonable needs of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person. The principal (family) home exceeds the reasonable needs if

- it is of greater value than the average (family) home in the region in which it is located. The relevant formula for the calculation is included in Section 9 of this Protocol;
- b. the equity in furnishings, contained in the principal (family) home and owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person, that exceeds the reasonable needs of these persons. The furnishings in the principal (family) home will exceed the reasonable needs if they are luxury items of extraordinary value, including but not limited to art collections, antique collections;
  - c. the equity in the principal (family) vehicle(s) that exceeds the reasonable needs of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person. The principal (family) vehicle(s) will exceed reasonable needs if their combined value is greater than the value of one average new passenger vehicle in the State in which the suspect or Accused or his family, as appropriate, resides;
  - d. the equity in stocks, bonds, or bank accounts owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person;
  - e. the equity in other assets, not listed in Section 5 of this Protocol, owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person, including but not limited to other real estate, land, apartments, luxurious personal belongings such as watches, jewellery, armoury, other vehicles like motorbikes, bikes, boats, trucks and business companies;
  - f. any assets, previously owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person, assigned or transferred to another person for the purpose of concealment;
  - g. any other assets that can be reasonably available to the person claiming indigence.

## **Section 5      Assets excluded from disposable means**

1. Means and assets excluded from the disposable means as referred to in Section 2.1.a of this Protocol are:
  - a. the equity in the principal (family) home to the extent that it is reasonably necessary for the needs of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person;
  - b. the equity in furnishings contained in the principal (family) home and owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person, to the extent that those furnishings are reasonably necessary for the needs of these persons;
  - c. the equity in the principal (family) vehicle to the extent that it is reasonably necessary for the needs of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person;
  - d. the equity in assets owned by the suspect's or Accused's spouse that do not constitute marital property. The Registrar determines whether these assets constitute marital property according to the marital property regime of the State in which the suspect or Accused and his or her spouse were wed or reside, unless proof is offered to the contrary;

- e. the equity in tools of the trade owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person, which are reasonably necessary to the livelihood of these persons;
  - f. the means of a financially associated person that should be excluded pursuant to Section 5.3 of this Protocol;
  - g. benefits paid or that the suspect or Accused is eligible to receive under Kosovo Law No. 05/L-054, whether to Assigned Counsel or the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person;
  - h. any contributions to the suspect's or Accused' legal representation, other than those referred to in Section 5.1.g of this Protocol, whether paid to Assigned Counsel or the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person.
2. The assets or means, owned by the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person that are frozen or for other reasons temporarily or readily not disposable shall not form part of the disposable means pursuant to Section 2.3 of this Protocol. If at any time until five (5) years after the last payment of the Legal Aid Fee any of these assets or means becomes available and readily disposable, this may constitute a significant change of circumstances, and the Registrar shall be informed without undue delay pursuant to Regulation 9(6) LAR. The Registrar may recover part of the Legal Aid Fee from those assets that the suspect or Accused is able to contribute, in accordance with the final determination of his/her means.
  3. The means of any other financially associated person shall be excluded from the disposable means if it is established that:
    - a. the income and/or assets of the financially associated person are not available for the use or benefit of the suspect or Accused;
    - b. The suspect or Accused does not have access to that income or those assets.
  4. Benefits and contributions referred to in Section 5.1.g and 5.1.h of this Protocol shall be treated in accordance with Section 2.5 of this Protocol.
  5. Exceptionally and in particular if indigence is assessed in relation to short-term legal representation, the Registrar may decide to exclude from disposable means such means that would require disproportional steps under the circumstances to make such means disposable.

## **Section 6      Incomes included in disposable means**

1. In assessing the suspect's or Accused's disposable means pursuant to Section 2.1.a of this Protocol, the Registrar shall take into account as disposable means the following income of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person:
  - a. Salaries, wages and commissions;
  - b. Business income after deducting reasonable expenses;
  - c. Investment income;
  - d. Government pensions;
  - e. Government allowances other than welfare payments;
  - f. Workers' compensation payments;

- g. Alimony, separation and maintenance payments owed to the suspect or Accused;
  - h. Regular payments received under any annuity, pension or insurance scheme;
  - i. Regular payments received from a mortgage, agreement of sale or loan agreement;
  - j. Any other regular income that is not excluded in Section 7 of this Protocol.
2. The Registrar determines the disposable means for the Stage of Proceedings, calculated from the moment when the suspect or Accused successfully submits a Declaration of Means Form and for the estimated duration of the Stage of Proceedings in which the suspect or Accused will require representation before the Specialist Chambers.

### **Section 7 Incomes excluded from disposable means**

The following incomes of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person shall not be included in the suspect's or Accused's disposable means pursuant to Section 2.1.a of this Protocol:

- a. Government welfare payments;
- b. Earnings of the suspect's or Accused's child or children;
- c. Alimony, separation or maintenance payments owed to the suspect's or Accused's spouse, and/or the Members of his or her household, and/or any other financially associated person.

### **Section 8 Liabilities deducted from disposable means**

The following liabilities of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person shall be deducted from the suspect's or Accused's disposable means:

- a. Payables that are either personal or owed by the business entity owned by the suspect or Accused;
- b. Loans from banking or other financial entities or private persons, the veracity of which can be tested;
- c. Equity used for financing the purchase of assets besides the principal (family) home.

### **Section 9 Formula for calculating equity in principal (family) home**

The formula for calculating the extent to which the equity in the suspect's or Accused's principal (family) home exceeds the needs of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person and can be considered to be part of the disposable means is as follows:

$$((V/LS) \times LSE) - EN = E$$

Whereby:

- a. V represents the value of the principal (family) home;
- b. LS represents the living space in square meters in the principal (family) home;
- c. LSE represents the living space in the principal (family) home that exceeds the average living space for the number of persons who habitually reside in the principal (family) home in the State in which it is located. This number is established according to the most up-to-date available official statistical information published by the government of the State of residence or reputable international organization. The following formula is used to calculate the LSE:

$$LS - (ALS \times M) = LSE$$

Whereby:

- d. ALS represents the average number of square meters of living space per person in the State in which the principal (family) home is located based on the most up-to-date available official statistical information;
- e. M represents the number of persons who habitually reside in the principal (family) home, including the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person;
- f. EN represents any encumbrances registered against the principal (family) home;
- g. E represents the equity in value in the principal (family) home that exceeds the reasonable needs of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person. If this amount is greater than zero, it is included in the suspect or Accused's disposable means in accordance with the LAR.

## Section 10 Formula for calculating Estimated Living Expenses

1. The formula for calculating estimated living expenses pursuant to Regulation 8(2) LAR and Section 2.1.b of this Protocol is as follows:

$$(((AE/AH) \times (M+D)) + EE) \times T = ELE$$

2. Whereby:

- a. AE represents the average monthly expenditure for an average household, obtained from the most up-to-date available official statistical information published by the government of the State of residence or reputable international organization. These expenditures include accommodations and living costs;
- b. AH represents the number of persons living in an average household in the suspect or Accused's State of residence;
- c. M represents the number of people who habitually reside in the principal (family) home, including the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person;
- d. D represents the suspect's or Accused's dependents who do not habitually reside in the principal (family) home;
- e. EE represent additional monthly living expenses, if any, of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person. These additional living expenses are expenses that are particular to these persons and are accordingly not foreseen in the AE index under Section 10.2.a of this Protocol. Additional monthly living expenses will include, but are not limited to, tuition fees and the costs of extraordinary medical care, insurance premiums, reasonable travel costs of the Members of his or her household to visit the suspect or Accused in detention;
- f. T represents the estimated duration for which legal aid is needed;
- g. ELE represents the estimated living expenses of the suspect or Accused, and/or his or her spouse, and/or the Members of his or her household, and/or any other financially associated person during that Stage of Proceedings, calculated from the moment when the suspect or Accused

successfully submits a Declaration of Means Form and for the estimated duration of the Stage of Proceedings in which the suspect or Accused will require representation before the Specialist Chambers.

## Section 11 Contribution

1. The Registrar may decide whether the contribution of the suspect or Accused to the costs of his or her legal representation, as provided for in Regulation 9 LAR, is paid directly to Counsel or to the Specialist Chambers. Where the suspect or Accused receives or is eligible to receive benefits or contributions referred to in Sections 5.1.g and 5.1.h of this Protocol, the Registrar shall take into account in the contribution decision who is the direct recipient of those benefits and contributions.
2. The Registrar shall determine the timeframe and instalments of the contribution.

The Hague, Netherlands  
22 February 2024



Dr Fidelma Donlon  
Registrar