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TÉLÉPHONE: 31 70 512-5334
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A 61 - A 41
28 OCTOBER 2009

Case No. IT-04-84-R77.5-A

*Prosecutor v. Baton Haxhiu*PUBLIC WITH PARTLY CONFIDENTIAL AND *EX PARTE* APPENDICES

DECISION

THE DEPUTY REGISTRAR,

NOTING the Statute of the Tribunal as adopted by the Security Council under Resolution 827 (1993), and in particular Article 21 thereof;

NOTING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended (“Rules”), and in particular Rules 44 and 45 thereof;

NOTING the Directive on Assignment of Defence Counsel (“Directive”) as adopted by the Tribunal on 28 July 1994, as subsequently amended, and in particular Articles 6, 7, 8, 9, 10, and 11(A)(iii) thereof;

CONSIDERING that on 22 May 2008, Mr. Baton Haxhiu (“Accused”) applied for legal aid by submitting a declaration of means to the Registry of the Tribunal pursuant to Article 7 of the Directive;

CONSIDERING that on 23 May 2008, Mr. Christian Kemperdick was assigned to the Accused for a period of 120 days pursuant to Article 11(B) of the Directive, to ensure the Accused’s right to counsel was not affected while the Registry examined his ability to remunerate counsel;

CONSIDERING that on 9 June 2008, the Registry began its investigation into the Accused’s means, as authorized by Article 9 of the Directive, requesting information and independent verification of statements made by the Accused in his declaration of means;

CONSIDERING that on 24 July 2008, the Accused was found guilty of contempt of court and sentenced to a fine of €7,000 and that the sentence became final with the Appeals Chamber’s Decision of 4 September 2008;

CONSIDERING that on 9 October 2008, the Registry received additional information indicating that the Accused in fact held substantial liquid means and that he may be able to completely reimburse the costs incurred for his defence;

CONSIDERING that the extent to which an applicant for legal aid is able to remunerate counsel is determined according to the Registry Policy for Determining the Extent to Which an Accused is Able to Remunerate Counsel (“Registry Policy”), attached as Appendix II to this Decision;

CONSIDERING that pursuant to Article 8(A) of the Directive, the burden is on an applicant in the first instance to prove on the balance of probabilities that he is unable to remunerate counsel¹ and that as a guardian of public funds the Registrar may only grant legal aid to the extent that the applicant proves he is unable to remunerate counsel;

CONSIDERING that no equity in the Accused's principal family home is included in his disposable means;²

CONSIDERING that the Accused owns a vehicle;

CONSIDERING that in accordance with the Registry Policy, no equity in the Accused's vehicle is included in his disposable means;³

CONSIDERING that the Accused and his spouse each receive a monthly salary;

CONSIDERING that in accordance with the Registry Policy, the income received by the Accused and his spouse from the date he requested legal aid until the conclusion of the period in which the Accused required representation before the Tribunal is included in the Accused's disposable means;⁴

CONSIDERING that the Accused and his spouse hold several bank accounts;

CONSIDERING that in accordance with the Registry Policy, the equity in stocks, bonds or bank accounts owned by the Accused, his spouse and persons with whom he habitually resides is included in the Accused's disposable means;⁵

CONSIDERING that in accordance with the Registry Policy, the liabilities of the Accused are subtracted from the Accused's disposable means;⁶

CONSIDERING therefore that the Accused's total disposable means consists of the salaries of the Accused and his spouse and the disposable equity in the bank accounts of the Accused and his spouse;

CONSIDERING that in accordance with the Registry Policy, the estimated living expenses of the Accused and his family during the period in which the Accused required representation before the Tribunal is deducted from his disposable means, the amount remaining being the contribution to be made by the Accused to his defence;⁷

CONSIDERING that in determining the extent to which the Accused is able to remunerate counsel, the Registry applies the formula in Section 11 of the Registry Policy, which reads:

$$\mathbf{DM - ELE = C}$$

¹ *The Prosecutor v Kvočka et al. IT-98-30/1*, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, paragraph 12; *The Prosecutor v Krajišnik IT-00-39*, Decision on the Defence's Motion for an Order Setting Aside the Registrar's Decision Declaring Momčilo Krajišnik Partially Indigent for Legal Aid Purposes, 20 January 2004, paragraph 18.

² Confidential *Ex Parte* Appendix I, paragraphs 6 to 10.

³ Confidential *Ex Parte* Appendix I, paragraphs 11 to 15.

⁴ Confidential *Ex Parte* Appendix I, paragraphs 16 to 22.

⁵ Confidential *Ex Parte* Appendix I, paragraphs 23 to 35.

⁶ Confidential *Ex Parte* Appendix I, paragraphs 36 to 38.

⁷ Confidential *Ex Parte* Appendix I, paragraphs 39 to 42.

Where:

DM represents an applicant's disposable means as calculated under Sections 5-8 of the Registry Policy;

ELE represents the estimated living expenses of an applicant, his spouse, his dependants and the persons with whom he habitually resides as calculated under Section 10 of the Registry Policy;

C represents the contribution to be made by an applicant to his defence.

CONSIDERING that by applying the formula $DM - ELE = C$, the Accused would be able to contribute €64,973 to the cost of his defence before the Tribunal and that as such he is fully able to remunerate counsel;⁸

CONSIDERING that the Accused has been provided an opportunity to comment on the Registry's findings;⁹

DECIDES in light of the foregoing and in accordance with Article 11(A)(iii) of the Directive, that the Accused is ineligible for legal aid;

CONSIDERING that defence costs in the amount of €12,122.80 were incurred as a result of the representation of the Accused pursuant to Article 11(B) of the Directive in contempt proceedings before the Tribunal;¹⁰

DECIDES that within 30 days of the date of this decision, the Accused shall reimburse the Tribunal in the amount of €12,122.80 for defence costs so incurred;

DECIDES that any unpaid costs related to the Accused's representation before the Tribunal in this case shall be borne by the Accused.

Dated this 28th day of October 2009
At The Hague,
The Netherlands.



⁸ Confidential *Ex Parte* Appendix I, paragraphs 43 to 45.

⁹ Confidential *Ex Parte* Appendix I, footnote 5.

¹⁰ Confidential *Ex Parte* Appendix I, footnote 24.

PUBLIC
APPENDIX II

PUBLIC APPENDIX II**REGISTRY POLICY FOR DETERMINING THE EXTENT TO WHICH AN ACCUSED IS
ABLE TO REMUNERATE COUNSEL****1****Entry into force**

This policy applies from 8 February 2007

2**General provisions**

Without prejudice to discretion afforded by Article 10 of the Directive on Assignment of Defence Counsel (“**Directive**”), the Registry uses the following policy to determine the extent to which an applicant for legal aid is able to remunerate counsel. When an applicant for legal aid submits a declaration of means pursuant to Article 7(B) of the Directive, the Registry assesses the income and assets of the applicant, his spouse and the persons with whom he habitually resides. In doing so the Registry may rely on the applicant’s declaration of means or undertake an inquiry into the applicant’s means pursuant to Article 9 of the Directive. From the established pool of income and assets, the Registry calculates the applicant’s disposable means, according to Sections 5-8 of this policy. From the disposable means, the Registry deducts the estimated living expenses of the applicant’s family and dependents during the estimated period in which the applicant will require representation before the International Tribunal. The amount remaining is the contribution to be made by the applicant to his defence.

3**Legislative Authority**

The legislative authority for this policy is enshrined in Articles 8 to 10 of the Directive.

4**Definitions**

Under this policy, the following terms shall mean:

Accused: a person against whom one or more counts in his indictment have been confirmed in accordance with Rule 47 of the Rules of Procedure and Evidence;

- Applicant:** an accused who has applied for legal aid before the International Tribunal;
- Child:** a person under 18 years of age who habitually resides in the principal family home;
- Contribution:** the extent to which an applicant is able to remunerate counsel. That is, the amount the applicant is expected to contribute to his defence;
- Dependent:** a person who derives his or her main financial support from the applicant, his spouse or persons with whom he habitually resides but who does not habitually reside in the principal family home;
- Disposable means:** income and assets of the applicant, his spouse and the persons with whom he habitually resides that in the opinion of the Registry exceed the reasonable needs of the applicant, his spouse, his dependents and the persons with whom he habitually resides. The Registry's calculation of the disposable means is based on Sections 5-8 of this policy;

Estimated living expenses:

the living costs likely to be incurred by the applicant, his spouse, his dependents and the persons with whom he habitually resides during the period from when the Registry issues its decision on the extent to which an applicant is able to remunerate counsel until the conclusion of the estimated period in which the applicant will require representation before the International Tribunal, as calculated under Section 10 of this policy;

- Marital property:** Property acquired by the applicant and his spouse during their marital union, excluding gifts made to one spouse specifically;

Persons with whom he habitually resides:

individuals who usually live with the applicant or who would live with the applicant if he were not in custody, and with whom the applicant is financially co-dependent; meaning, that there is evidence of a pooling of financial resources such that the applicant and the individual constitute one financial unit;

Principal family home:

the principal place of residence of the applicant, his spouse or persons with whom he habitually resides, owned by the applicant, his spouse or persons with whom he habitually resides; usually where the applicant would reside if he were not in custody;

Principal family vehicle:

a vehicle habitually used as a primary form of transport for the applicant, his spouse and persons with whom he habitually resides, owned by the applicant, his spouse or persons with whom he habitually resides;

Readily disposable asset:

an asset owned by the applicant, the applicant's spouse or the persons with whom he habitually resides that can be sold, mortgaged or leased in order to raise money for the applicant's defence;

Spouse: an adult who is living with the applicant as husband or wife, regardless of legal marital status;

Tools of the trade: standard tools or equipment needed in a particular trade, profession or business.

5

Assets included in disposable means

In determining the applicant's disposable means, the Registry includes the following:

(a) the equity in the principal family home that exceeds the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides. The principal family home will exceed the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides, if it is of greater value than the average family home in the region in which it is located. The Registry determines the extent to which the principal family home exceeds the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides in accordance with the formula in Section 9;

(b) the equity in furnishings contained in the principal family home and owned by the applicant, his spouse or the persons with whom he habitually resides that exceed the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides. The furnishings in the principal family home will exceed the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides 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 or principal family vehicles that exceeds the reasonable needs of the applicant, his spouse and persons with whom he habitually resides. The principal family vehicle or principal family vehicles will exceed the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides if their combined value is greater than the value of one average automobile in the state in which the applicant's family resides. In determining the value of the average automobile in the state in which the applicant's family resides, the Registry relies on official documentation from the governments of the republics of the former Yugoslavia;

(d) the equity in stocks, bonds or bank accounts owned by the applicant, his spouse and persons with whom he habitually resides, including but not limited to the applicant's TULP account at the United Nations Detention Unit, less allowances paid by the United Nations into that account;

(e) the equity in any other assets, not listed in Section 6, owned by the applicant, his spouse or the persons with whom he habitually resides;

(f) any assets previously owned by the applicant, his spouse and persons with whom he habitually resides, including those listed in Section 5(a)-(e), where the applicant, his spouse or the persons with whom he habitually resides assigned or transferred any interest in those assets to another person for the purpose of concealing those assets.

6

Assets excluded from disposable means

In determining the applicant's disposable means, the Registry excludes the following:

- (a) the equity in the principal family home to the extent that the principal family home is reasonably necessary for the applicant, his spouse and the persons with whom he habitually resides;
- (b) the equity in furnishings contained in the principal family home and owned by the applicant, his spouse or the persons with whom he habitually resides, to the extent that those furnishings are reasonably necessary for the applicant, his spouse and the persons with whom he habitually resides;
- (c) the equity in the principal family vehicle to the extent that the principal family vehicle is reasonably necessary for the applicant, his spouse and persons with whom he habitually resides;
- (d) the equity in assets owned by the applicant, his spouse and persons with whom he habitually resides that are not readily disposable;
- (e) the equity in assets owned by the applicant's spouse that do not constitute marital property, including those assets listed in Section 5. The Registry determines whether assets constitute marital property according to the marital property regime of the state in which the applicant and his spouse were wed or reside unless proof is offered to the contrary;
- (f) the equity in tools of the trade owned by the applicant, his spouse and persons with whom he habitually resides that are reasonably necessary to the livelihood of the applicant, his spouse, his dependents or the persons with whom he habitually resides.

7

Income included in disposable means

In determining the applicant's disposable means the Registry considers that the applicant, his spouse and the persons with whom he habitually resides will continue to receive their personal income from when the Registry issues its decision on the extent to which an applicant is able to remunerate counsel until the conclusion of the estimated period in which the applicant will require representation before the International Tribunal at the pre-trial, trial or appeals stage.

In determining the applicant's disposable means, the Registry includes the following income of the applicant, his spouse and the persons with whom he habitually resides:

- (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 applicant;
- (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 8.

8

Income excluded from disposable means

In determining the applicant's disposable means the Registry does not include the following income of the applicant, his spouse and the persons with whom he habitually resides:

- (a) government welfare payments;
- (b) earnings of the applicant's child or children;
- (c) alimony, separation or maintenance payments owed to the applicant's spouse, his dependents or persons with whom he habitually resides.

9

Formula for calculating the extent to which the equity in the applicant's principal family home exceeds the needs of the applicant, his spouse and the persons with whom he habitually resides

Given the official data available from the governments within the republics of the former Yugoslavia, the following formula is used to determine the extent to which the applicant's principal family home exceeds the needs of the applicant, his spouse and the persons with whom he habitually resides:

$$\left(\frac{V}{LS} \times LSE \right) - EN = E$$

Where-

V represents the valuation of the principal family home obtained by the Registry;

LS represents the living space in square meters in the principal family home;

EN represents any encumbrances registered against the principal family home;

E represents the equity in the principal family home that exceeds the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides. If this amount is greater than zero, it is included in the applicant's disposable means in accordance with Section 5(a);

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, according to official documentation of the governments of the republics of the former Yugoslavia. The following formula is used to calculate LSE:

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

Where-

ALS represents the average number of square meters of living space per person in the state in which the principal family home is located, obtained from official documentation of the governments of the republics of the former Yugoslavia;

M represents the number of persons who habitually reside in the principal family home, including the applicant, the applicant's spouse and the persons with whom he habitually resides.

10

Formula for calculating the estimated living expenses

The following formula is used to calculate the estimated living expenses of the applicant, his spouse, his dependents and the persons with whom he habitually resides:

$$\frac{[AE \times (M + D) + EE]}{4} \times T = ELE$$

Where-

AE represents the average monthly expenditure for a four-person household, obtained from official documentation of the governments of the republics of the former Yugoslavia. The index includes accommodation and living costs;

EE represents additional monthly living expenses of the applicant, his spouse, his dependents and the persons with whom he habitually resides. These additional living expenses are expenses that are particular to the applicant, his spouse, his dependents and the persons with whom he habitually resides and are accordingly not foreseen in the AE index. Additional living expenses will include but not be limited to tuition fees and the costs of extraordinary medical care.

M represents the number of people who habitually reside in the principal family home, including the applicant, the applicant's spouse and the persons with whom he habitually resides;

D represents the applicant's dependents who do not habitually reside in the principal family home;

T represents the period from when the Registry issues its decision on the extent to which an applicant is able to remunerate counsel until the conclusion of the estimated period in which the applicant will require representation before the International Tribunal at the pre-trial, trial or appeals stage;

ELE represents the estimated living expenses for the applicant, his spouse, his dependents and the persons with whom he habitually resides, during the period from when the Registry issues its decision on the extent to which an applicant is able to remunerate counsel until the conclusion of the estimated period in which the applicant will require representation before the International Tribunal at the pre-trial, trial or appeals stage.

11

Formula for calculating the extent to which an applicant is able to remunerate counsel

The following formula is used to calculate the extent to which an applicant is able to remunerate counsel:

$$\mathbf{DM - ELE = C}$$

Where-

DM represents the applicant's disposable means as calculated under Sections 5-8;

ELE represents the estimated living expenses for the applicant, his spouse, his dependents and the persons with whom he habitually resides as calculated under Section 10;

C represents the contribution to be made by the applicant to his defence.

12

Deduction of Contribution

The Registry shall deduct the value of the contribution from defence team allotments.
