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Prosecutor v. Radovan Karadžić
Case No. IT-95-5/18-T

DECISION**PUBLIC****WITH PUBLIC APPENDIX I AND CONFIDENTIAL AND *EX PARTE* APPENDIX II****THE REGISTRAR,**

NOTING the Statute of the Tribunal as adopted by the Security Council under Resolution 827 (1993), as subsequently amended, 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 Rule 45(F) thereof;

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

NOTING the Registry Policy for Determining the Extent to which an Accused is Able to Remunerate Counsel ("Registry Policy");¹

NOTING the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused issued on 28 September 2007, as subsequently amended ("Remuneration Scheme"), and in particular paragraph 1 thereof;

NOTING that Mr. Radovan Karadžić ("Accused") was transferred to the seat of the Tribunal on 30 July 2008, and that in a letter to the Registry dated 4 August 2008, the Accused expressed his intention to represent himself before the Tribunal in accordance with Rule 45(F) of the Rules,² which he reiterated during his initial appearance on 31 July 2008 and at his further appearances held on 29 August 2008 and 3 March 2009;³

CONSIDERING that on 29 September 2008, the Accused submitted a declaration of means to the Registry, thereby applying for funding of his defence team as a self-represented accused on the basis that he did not have sufficient means to pay for his defence;

CONSIDERING that the Registrar applies both the Directive and the Registry Policy *mutatis mutandis* to a self-represented accused seeking Tribunal funding for his defence, in accordance with paragraph 1 of the Remuneration Scheme;⁴

¹ Attached as Appendix I.

² *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-I, public Registry Submission Pursuant to Rule 33(B) Regarding the Accused's Representation and the Transmission of Court Documents, dated 6 August 2008.

³ *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, transcript pages 20, 29 and 130, respectively.

⁴ See also para. 3 of the preamble of the Remuneration Scheme.

CONSIDERING that the Registrar has examined the information provided by the Accused in his declaration of means and has completed an inquiry into the Accused's means pursuant to Article 9 of the Directive;

CONSIDERING that before the Registrar made his final determination on the Accused's ability to remunerate his defence team, the Accused was given an opportunity to comment on the Registrar's findings concerning his means;⁵

NOTING that the Registrar determines the eligibility of an accused for legal aid in accordance with Article 10 of the Directive and the Registry Policy;

NOTING that pursuant to Article 10(A) of the Directive, the eligibility of an accused for legal aid shall be determined by taking into account "means of all kinds of which the [...] accused has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the spouse of a[n] [...] accused, as well as those of persons with whom he habitually resides, provided that it is reasonable to take such means into account";

NOTING that under the Registry Policy, the Registrar first determines the disposable means of an applicant, and then deducts from the applicant's disposable means the estimated living expenses of the applicant, his spouse, dependents and the persons with whom he habitually resides during the estimated period in which the applicant will require legal assistance before the Tribunal, the amount remaining being the contribution to be made by the applicant to the cost of his defence;⁶

CONSIDERING that under the family law of the Republika Srpska, the Accused's principal family home constitutes a marital property asset which is owned jointly by the Accused and his spouse;⁷

CONSIDERING that in accordance with Article 10(A) of the Directive and Sections 5(a) and 9 of the Registry Policy, the equity in the Accused's principal family home is included in the Accused's disposable means to the extent that the principal family home exceeds the reasonable needs of the Accused and the persons with whom he habitually resides;⁸

CONSIDERING that pursuant to Section 5(f) of the Registry Policy, the Registrar includes in the determination of the applicants disposable means "any assets previously owned by the applicant, his spouse and persons with whom he habitually resides, [...] where the applicant, his spouse [...] assigned or transferred any interest in those assets to another person for the purpose of concealing those assets" or to avoid obligations under the Directive;⁹

CONSIDERING that the Accused's spouse was the registered co-owner of a business company including real property in Pale, Republika Srpska ("Business Premises") until 28 March 2012;¹⁰

⁵ Confidential *ex parte* Appendix II, ("Appendix II"), para. 14.

⁶ Appendix I, Sections 2 and 11.

⁷ Family Law of the Republika Srpska, Article 270, Official Journal of Republika Srpska, 54/2012 and 41/2008.

⁸ Appendix II, paras. 16-43.

⁹ *Prosecutor v. Krajišnik*, Case No. IT-00-39-PT, 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, para. 22. See also Appendix II, paras 32-37 and 60-64.

¹⁰ Appendix II, paras. 52-64.

CONSIDERING that in accordance with Article 10 (A) of the Directive and Section 5(e) and (f) of the Registry Policy, equity in the Business Premises is included in the Accused's disposable means;

CONSIDERING that in accordance with Article 10(A) of the Directive and Section 7 of the Registry Policy, income of the Accused, his spouse and the persons with whom he habitually resides is included in the Accused's disposable means;¹¹

CONSIDERING that the Accused's spouse receives a regular monthly pension, which amounts to regular income that is included in the Accused's disposable means;¹²

CONSIDERING that in accordance with Article 10(A) of the Directive and Sections 5 and 7 of the Registry Policy, the equity in stocks, bonds or bank accounts as well as the equity in any other assets owned by the Accused, his spouse and the persons with whom he habitually resides, including cash, is included in the Accused's disposable means;¹³

CONSIDERING that identified equity in the Accused's bank account at the United Nations Detention Unit has been included in the Accused's disposable means;¹⁴

CONSIDERING that the following have not been taken into consideration by the Registrar in determining the Accused's disposable means, for the reasons set out in detail in the Appendix II: a house in Pale, Republika Srpska;¹⁵ the value of a house and land in Gornje Dragulje, Republika Srpska;¹⁶ identified family vehicles;¹⁷ and publication royalties;¹⁸

CONSIDERING that the estimated living expenses of the Accused's household during the estimated period in which the Accused will require legal assistance before the Tribunal have been calculated in accordance with Section 10 of the Registry Policy;¹⁹

CONSIDERING that in accordance with Registry practice, any personal debts on behalf of the Accused and the member(s) of his household are included in the Registry's calculation as an offset to his disposable means, thereby reducing the total contribution;

CONSIDERING that the Accused has no liabilities to be deducted pursuant to the Registry's practice in determining disposable means under Article 10(A) of the Directive;²⁰

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

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

Where:

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

¹¹ *Id.*, paras. 70-74.

¹² *Id.*, paras. 71-74.

¹³ *Id.*, paras. 44-69 and 75-82.

¹⁴ *Id.*, paras. 78-82.

¹⁵ *Id.*, paras. 18-20.

¹⁶ *Id.*, paras. 45-51.

¹⁷ *Id.*, paras. 65-69.

¹⁸ *Id.*, paras. 76-77.

¹⁹ *Id.*, paras. 97-98.

²⁰ *Id.*, paras. 83-95.

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

C represents the contribution to be made by an applicant to the cost of his defence;

CONSIDERING that by applying this formula, the Registrar finds that the Accused is able to remunerate his defence team in part;²¹

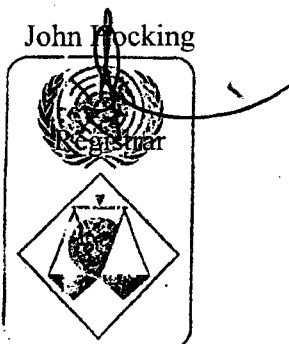
DECIDES, in view of the foregoing, and for the reasons set out in detail in the Appendix II, that the Accused shall contribute €146,501.00 to the cost of his defence before the Tribunal;²²

DECIDES that with the exception of the Accused's contribution of €146,501.00, the expenses referred to in Articles 23, 26, 27 and 28 of the Directive, as applicable to a self-represented accused and in accordance with the Remuneration Scheme, shall be borne by the Tribunal;

INFORMS the Accused that his contribution of €146,501.00 will be deducted from future allotments issued to the Accused's defence team, in a manner to be agreed upon by the Registrar and the Accused; and

REMINDS the Accused of his obligation pursuant to Article 7(E) of the Directive to update his declaration of means at any time a change relevant to his declaration of means occurs.

John Hocking



The Registrar's seal is located below the signature. It consists of a rectangular border containing the United Nations emblem (a world map) at the top and the International Criminal Tribunal for the former Yugoslavia (ICTY) emblem (a scale of justice) at the bottom. The word 'Registrar' is printed below the UN emblem.

Dated this 10th day of October 2012
At The Hague,
The Netherlands.

²¹ *Id.*, para. 99.

²² *Id.*, paras. 99-100.

PUBLIC APPENDIX I**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:

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

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:

$$DM - ELE = C$$

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.
