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09 FEBRUARY 2007

*Prosecutor v Mićo Stanišić*  
Case No. IT-04-79-PT

## DECISION

## PARTLY CONFIDENTIAL AND EX PARTE PROSECUTION

## THE ACTING DEPUTY REGISTRAR,

**NOTING** the Statute of the International 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 International Tribunal on 11 February 1994, as subsequently amended, and in particular Rules 44 and 45 thereof;

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

**NOTING** the Code of Professional Conduct for Counsel Appearing before the International Tribunal (IT/125/REV.2);

**CONSIDERING** that Mićo Stanišić ("Accused") was transferred to the seat of the International Tribunal on 11 March 2005, and that on or about that date he applied for the assignment of International Tribunal-paid counsel on the basis that he did not have sufficient means to remunerate counsel;

**NOTING** that on or about 24 March 2005, the Accused requested that the Registrar assign Mr. Branko Lukić, an attorney from Serbia and Montenegro, as his International Tribunal-paid counsel, but because Mr. Lukić was engaged in two other cases before the International Tribunal at that time, the Registrar refused to assign him and invited the Accused to select an alternate counsel from the Registrar's list of counsel qualified for assignment to indigent suspects and accused;

**NOTING** that on 5 April 2005, the Accused provided the Registrar with a power of attorney in which he authorized Mr. Lukić to represent him before the International Tribunal in a *pro bono* capacity;

**NOTING** that on 9 March 2006, the Registrar received a letter from Mr. Lukić in which he informed the Registrar that he wished to terminate his representation of the Accused;

**CONSIDERING** that on 2 May 2006, the Accused informed the Registrar that he wanted Mr. Stevo Bezbradica, a Barrister and Solicitor from Australia, to replace Mr. Lukić;

**CONSIDERING** that on 5 May 2006, acting pursuant to Article 11(B) of the Directive, the Registrar assigned Mr. Bezbradica as counsel to the Accused for a period of 120 days, determining that an interim assignment of counsel was necessary to ensure that the Accused's right to counsel was not affected while the Registrar examined the Accused's ability to remunerate counsel;

**CONSIDERING** that on 12 September 2006, pursuant to Article 11(B) of the Directive, the Registrar extended Mr Bezbradica's assignment for a further period of 120 days effective as of 1 September 2006, and that on 28 December 2006, the Registrar extended Mr Bezbradica's assignment for another 120 days effective as of 30 December 2006;

**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 counsel, the Accused was given an opportunity to comment on the Registrar's findings concerning his means;

**CONSIDERING** 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 [...] accused, as well as those of persons with whom he habitually resides, provided that it is reasonable to take such means into account." In accordance with Article 10(B) of the Directive, "[f]or the purpose of determining whether the [...] accused has an ownership interest in any property, the Registrar may consider the apparent lifestyle of a [...] accused, and his enjoyment of that or other property, and whether or not he derives income from it."

**CONSIDERING** that the Registrar determines the eligibility of an accused for legal aid in accordance with Article 10 of the Directive and the "Registry Policy for Determining the Extent to which an Accused is able to Remunerate Counsel" ("Registry Policy") which is attached as Appendix II to this decision;

**NOTING** that under the Registry Policy, the Registrar first determines the disposable means of an applicant for legal aid, and then deducts from the applicant's disposable means, the estimated living expenses of the applicant, his family and dependents during the estimated period in which the applicant will require representation before the International Tribunal, the amount remaining being the contribution to be made by the applicant to the cost of his defence;<sup>1</sup>

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<sup>1</sup> Appendix II, Sections 2 and 11.

**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;<sup>2</sup>

**CONSIDERING** that the Accused and his spouse own a parking garage in Belgrade, Republic of Serbia, and that pursuant to Article 10(A) of the Directive and Section 5(e) of the Registry Policy, the equity therein is included in the Accused's disposable means;<sup>3</sup>

**CONSIDERING** that the Accused owns a plot of land in Ponor, Republika Srpska, and that pursuant to Article 10(A) of the Directive and Section 5(e) of the Registry Policy, the equity therein is included in the Accused's disposable means;<sup>4</sup>

**CONSIDERING** that the Accused's spouse is the registered owner of a business premises in Belgrade, Republic of Serbia ("Business Premises"), and that the Business Premises was acquired during the Accused's marital union with his spouse;<sup>5</sup>

**CONSIDERING** that under the family law of the Republic of Serbia, the Business Premises constitutes a marital property asset which is owned jointly by the Accused and his spouse;<sup>6</sup>

**CONSIDERING** that pursuant to Article 10(A) of the Directive and Section 5(e) of the Registry Policy, the equity in the Business Premises is included in the Accused's disposable means;<sup>7</sup>

**CONSIDERING** that in accordance with Article 10(A) of the Directive and Sections 4 and 5(c) of the Registry Policy, the equity in the Accused's principal family vehicles is included in the Accused's disposable means to the extent that the principal family vehicles exceed the reasonable needs of the Accused and the persons with whom he habitually resides;<sup>8</sup>

**CONSIDERING** that the Accused's liabilities have been deducted from his disposable means in accordance with Article 10(A) of the Directive and Section 5(d) of the Registry Policy;<sup>9</sup>

**CONSIDERING** that the Accused's son, with whom the Accused habitually resides, has a liability which has been deducted from the Accused's disposable means in accordance with Article 10(A) of the Directive and Section 5(d) of the Registry Policy;<sup>10</sup>

**CONSIDERING** that the estimated living expenses of the Accused's household and dependants during the estimated period in which the Accused will require representation

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<sup>2</sup> Confidential *Ex Parte* Appendix I ("Appendix I"), paras. 5 to 9.

<sup>3</sup> *Ibid.* at paras. 10 to 12.

<sup>4</sup> *Ibid.* at paras. 13 and 15.

<sup>5</sup> *Ibid.* at para. 16.

<sup>6</sup> Family Law of the Republic of Serbia, Article 171(1), Official Journal of Serbia, no. 18/2005.

<sup>7</sup> Appendix I, para. 20.

<sup>8</sup> *Ibid.* at paras. 21 to 27.

<sup>9</sup> *Ibid.* at paras. 35 to 41.

<sup>10</sup> *Ibid.* at paras. 42 to 44.

before the International Tribunal have been calculated in accordance with Section 10 of the Registry Policy;<sup>11</sup>

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

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

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 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 his defence;

**CONSIDERING** that by applying the formula  $DM - ELE = C$ , the Accused's contribution is €197,633, and as such, he is able to remunerate counsel in part;<sup>12</sup>

**NOTING** that as of today's date, the cost of the Accused's defence before the International Tribunal at the pre-trial stage (excluding the cost of necessary travel and Daily Subsistence Allowance) is estimated at €219,897;

**NOTING** that as of today's date, it is not possible to accurately estimate the cost of the Accused's defence before the International Tribunal at the trial stage;

**DECIDES** in light of the foregoing and in accordance with Article 11(A)(ii) of the Directive, that the Accused is able to remunerate counsel in part, and that he shall contribute €197,633 to the cost of his defence before the International Tribunal;

**DECIDES** that with the exception of the Accused's contribution of €197,633, the expenses referred to in Articles 23, 26, 27 and 28 of the Directive shall be borne by the International Tribunal;


**DECIDES** without prejudice to Article 19 of the Directive, and pursuant to Article 11(A)(ii) of the Directive, to assign Mr Stevo Bezbradica as counsel to the Accused permanently, effective as of the date of this decision;

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<sup>11</sup> *Ibid.* paras. 46 and 47.

<sup>12</sup> *Ibid.* paras. 48 and 49.

**INFORMS** the Accused and his counsel that the Accused's contribution of €197,633 will be deducted from the legal aid allotments paid to the Accused's defence team, in a manner to be agreed upon by the Registrar and Mr Bezbradica.

  
Robin Vincent  
Acting Deputy Registrar

Dated this ninth day of February 2007,  
At The Hague,  
The Netherlands.