

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIACHURCHILLPLEIN, 1. P.O. BOX 13888
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TÉLÉPHONE: 31 70 512-5334
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D3693-D3671
14 FEBRUARY 2005**Case No. IT-03-66-T*****Prosecutor v. Limaj et al.*****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, 8, 10, 11(A)(ii) and 23(C) thereof;

NOTING that on 3 March 2003, Mr Fatmir Limaj ("Accused") applied for legal aid by submitting a declaration of means to the Registry of the Tribunal and that pursuant to that declaration of means and Article 11(B) of the Directive, the Registrar assigned Mr Karim Khan, a barrister from the United Kingdom, as counsel to him on 4 March 2003;

CONSIDERING that during 2003, a fund was established in Kosovo to raise monies for the Accused's defence before the Tribunal ("Fund") and that by October 2003, the Fund had raised at least US\$291,594.92;

CONSIDERING that because this sum was sufficient to cover the costs of the Accused's defence at the pre-trial stage, the Registrar withdrew the Accused's legal aid on 30 October 2003 and that since that time the Accused has been represented by Mr Michael Mansfield Q.C. and Mr Karim Khan, retained pursuant to Rule 44 of the Rules;

CONSIDERING that on 27 July 2004, the Accused re-applied for legal aid by submitting a new declaration of means to the Registry of the Tribunal and thereby triggered a re-assessment of his ability to remunerate counsel at the trial stage of the proceedings;

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" (hereinafter "Registry Policy"), attached as Appendix II to this Decision;

CONSIDERING that in order to determine the Accused's ability to remunerate counsel, the Registry conducted an inquiry into the Accused's means pursuant to Article 10(A) of the Directive;

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 the Accused has proven, on the balance of probabilities that neither he, nor his spouse, nor those with whom he habitually resides own any immovable assets;²

CONSIDERING that the Accused owns a vehicle;

CONSIDERING that in accordance with the Registry Policy, the Accused's vehicle is included in his disposable means to the extent that it exceeds the reasonable needs of the Accused, his spouse and those with whom he habitually resides;³

CONSIDERING that the Accused receives a monthly salary;

CONSIDERING that in accordance with the Registry Policy, the income expected to be received by the Accused from the date he becomes eligible for legal aid until the conclusion of the estimated period in which the Accused will require representation before the International Tribunal is included in the Accused's disposable means;⁴

CONSIDERING that the Accused claims that his Fund has been exhausted and that it is no longer available to him to pay for his defence before the Tribunal;

CONSIDERING however that the Accused has not proven on the balance of probabilities that the Fund has been exhausted in its entirety and that the portion of the Fund that he has not proven to have been exhausted ("Outstanding Sum") is included in the Accused's disposable means;⁵

CONSIDERING therefore that the Accused's total disposable means consists of the equity in his principal family vehicle to the extent that it exceeds his reasonable needs and those of his family, the Accused's salary and the Outstanding Sum;

CONSIDERING that in accordance with the Registry Policy, the estimated living expenses of the Accused and his family during the estimated period in which the Accused will require representation before the International Tribunal is deducted from his disposable means, the amount remaining being the contribution to be made by the Accused to his defence;⁶

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 8.

³ Confidential *Ex Parte* Appendix I, paragraphs 9 to 12.

⁴ Confidential *Ex Parte* Appendix I, paragraphs 36 to 39.

⁵ Confidential *Ex Parte* Appendix I, paragraphs 14 to 34.

⁶ Confidential *Ex Parte* Appendix I, paragraphs 40 to 43.

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:

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

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 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 $\text{DM} - \text{ELE} = \text{C}$, the Accused's contribution is US\$155,706 and that as such he is partially able to remunerate counsel;⁷

CONSIDERING that as of today's date, the costs of the Accused's defence before the Tribunal at the trial stage (excluding the costs of necessary travel and Daily Subsistence Allowances) are estimated, based on a trial period of 10 months, at US\$298,470 and €30,000 which, when converted into US dollars using the official United Nations exchange rate for January 2005 totals US\$339,176 ("Estimated Trial Costs");

CONSIDERING that when the Accused's contribution of US\$155,706 is deducted from the Estimated Trial Costs of US\$339,176, the amount remaining is US\$183,470 which is the estimated amount that the Tribunal will pay towards the defence of the Accused at the trial stage (excluding the costs of necessary travel and Daily Subsistence Allowances);

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

CONSIDERING that the Accused has requested that Mr Mansfield and Mr Khan be assigned to him as counsel and co-counsel respectively;

NOTING that Mr Mansfield and Mr Khan are on the Rule 45 list of counsel eligible to be assigned to indigent suspects or accused and have agreed to the assignment requested by the Accused;

RECALLING Article 23(C) of the Directive which prohibits assigned counsel from receiving remuneration from sources other than the Tribunal or the client for the assignment;

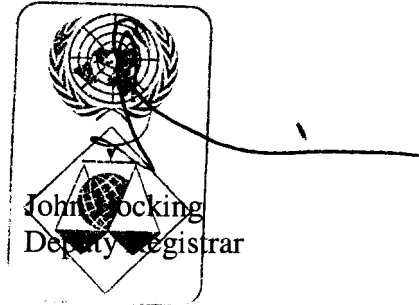
DECIDES that the Accused shall contribute US\$155,706 to his defence costs and that the Registry shall deduct US\$155,706 from legal aid allocations paid to the Accused's defence team at the trial stage in accordance with the Registry's payment policies;

DECIDES that, with the exception of the Accused's contribution of US\$155,706, the expenses referred to in Articles 22, 26 and 27 of the Directive shall be borne by the Tribunal, including an

⁷ Confidential *Ex Parte* Appendix I, paragraph 43.

estimated US\$183,470 in counsel and support staff fees plus the cost of necessary travel and Daily Subsistence Allowance;

DECIDES without prejudice to Article 18 of the Directive and pursuant to Article 11(A)(i) of the Directive to assign Mr Michael Mansfield Q.C. as counsel to the Accused and Mr Karim Khan as co-counsel to the Accused permanently, effective as of the beginning of the Accused's trial, 15 November 2004.



Dated this 10th day of February 2005
At The Hague,
The Netherlands