



27 SEPTEMBER 2005

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIACHURCHILLPLEIN, 1. P.O. BOX 13888
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POUR L'EX-YOUGOSLAVIECHURCHILLPLEIN, 1. B.P. 13888
2501 EW LA HAYE, PAYS-BAS
TÉLÉPHONE: 31 70 512-5334
FAX: 31 70 512-8637**Case No. IT-05-88-PT*****Prosecutor v. Radivoje Miletić*****DECISION****THE 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 Rule 45 thereof;

NOTING the Directive on Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended ("Directive"), and in particular Articles 6, 7, 8, 10, 11(A)(ii), 18 and 23(C) thereof;

CONSIDERING that on 2 March 2005, acting pursuant to Rule 62(B) of the Rules, the Deputy Registrar assigned Mr Peter Morrissey to represent Radivoje Miletić ("Accused") as duty counsel at his initial appearance and in such other matters as necessary until a permanent counsel was assigned;

CONSIDERING that on 8 April 2005, the Accused submitted a declaration of means form to the Registry pursuant to Article 7(B) of the Directive, thereby applying for the assignment of Tribunal-paid counsel on the basis that he did not have sufficient means to remunerate counsel;

CONSIDERING that on 8 April 2005, the Accused requested the Registry to assign Ms Natasha Fauveau-Ivanović, attorney at law from France, as his Tribunal-paid counsel;

CONSIDERING that on that date the Registry had not yet assessed the Accused's ability to remunerate counsel and that in order to ensure that the Accused's right to counsel was not affected while it did so, the Registrar assigned Ms Fauveau-Ivanović as counsel to the Accused on 14 April 2005 for a period of 120 days pursuant to Article 11(B) of the Directive;

CONSIDERING that the Registry 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 10(A) of the Directive;

CONSIDERING that the Accused was given an opportunity to comment on the findings of the Registry's inquiries into his means before the Registry made its final determination on his ability to remunerate counsel;

CONSIDERING that pursuant to Article 8(B) of the Directive, the eligibility of an accused for legal aid shall be determined by taking into account "means of all kinds of which he 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 suspect or accused, as well as those of persons with whom he habitually resides. Account may also be taken of the apparent lifestyle of a suspect or accused, and of his enjoyment of any property, movable or immovable, and whether or not he derives income from it";

CONSIDERING that the Registry determines the eligibility of an accused for legal aid in accordance with Article 8 of the Directive and the "Registry Policy for Determining the Extent to which a Suspect or 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 Registry first determines the disposable means of an applicant for legal aid and then deducts from the disposable means the estimated living expenses of his family and dependents during the estimated period in which the applicant will require representation before the Tribunal, the amount remaining being the contribution to be made by the applicant to the costs of his defence;¹

CONSIDERING that the equity in the Accused's principal family home is included in his disposable means to the extent that it exceeds the reasonable needs of the Accused, his spouse and

¹ Appendix II, Sections 2 and 11.

those with whom he habitually resides in accordance with Article 8(B) of the Directive and Section 5(a) of the Registry Policy;²

CONSIDERING that the Accused owns a garage and that the equity therein is included in his disposable means in accordance with Article 8(A) of the Directive and Section 5(e) of the Registry Policy;³

CONSIDERING that the Accused and his spouse receive income which is included in the Accused's disposable means in accordance with Article 8(B) of the Directive and Section 7 of the Registry Policy;⁴

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 Tribunal are deducted from his disposable means, the amount remaining being the contribution to be made by the Accused to his defence;⁵

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:

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

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's contribution is US\$42,722 and that as such he is partially able to remunerate counsel;⁶

² Confidential *Ex Parte* Appendix I, paragraphs 5 to 10.

³ Confidential *Ex Parte* Appendix I, paragraphs 11 to 14.

⁴ Confidential *Ex Parte* Appendix I, paragraphs 18 to 25.

⁵ Confidential *Ex Parte* Appendix I, paragraphs 26 to 28.

⁶ Confidential *ex parte* Appendix I, paragraphs 29 and 30.

NOTING that as of today's date, the costs of the Accused's defence before the Tribunal at the pre-trial stage (excluding the costs of necessary travel and Daily Subsistence Allowances) are estimated at US\$279,619;

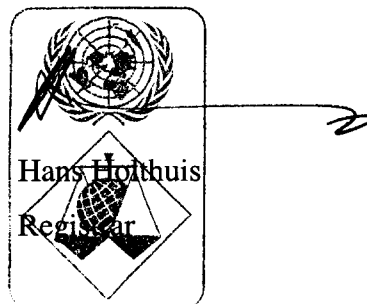
NOTING that as of today's date, it is not possible to accurately estimate the costs of the Accused's defence before the Tribunal at the trial stage;

DECIDES in light of the foregoing and in accordance with Article 11(A)(ii) of the Directive, that the Accused is partially eligible for legal aid and that he shall contribute US\$42,722 to the costs of his defence;

DECIDES that with the exception of the Accused's contribution of US\$42,722, the expenses referred to in Articles 22, 26 and 27 of the Directive shall be borne by the Tribunal;

DECIDES without prejudice to Article 18 of the Directive and pursuant to Article 11(A)(ii) of the Directive to assign Ms Fauveau-Ivanović as counsel to the Accused permanently, effective as of 14 August 2005;

INFORMS the Accused and his counsel that the Accused's contribution of US\$42,722 will be deducted from legal aid allotments paid to his defence team in a manner to be agreed upon by the Registry and the Accused's counsel.



Dated this 26th day of September 2005

At The Hague

The Netherlands