

Prosecutor v. Dragomir Milošević

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) and 23 (C) thereof;

CONSIDERING that on 21 December 2004, the Accused submitted a declaration of means form to the Registry pursuant to Article 7(B) of the Directive and requested Tribunal legal aid on the basis that he did not have sufficient means to remunerate counsel;

CONSIDERING that on 21 December 2004, the Accused requested the assignment of Mr Branislav Tapuskovic, attorney at law from Belgrade, as counsel to represent him before the Tribunal;

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 Mr Tapuskovic as counsel to the Accused on 22 December 2004 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 Accused has an ownership interest in his principal family home and that pursuant to Article 8 (B) of the Directive and Section 5(a) of the Registry Policy, the equity therein is included in his disposable means to the extent that the principal family home exceeds the reasonable needs of the Accused and his family;²

CONSIDERING that the Accused has an ownership interest in a garage and that pursuant to Article 8(A) of the Directive and Section 5(e) of the Registry Policy , the equity therein is included in his disposable means;³

CONSIDERING that the Accused has an ownership interest in a parcel of land which is not readily disposable and which, pursuant to Article 8(B) of the Directive and Section 6(d) of the Registry Policy, is not included in his disposable means ;⁴

CONSIDERING that the Accused has an ownership interest in a vehicle and that the equity therein is not included in his disposable means because the vehicle does not exceed the reasonable needs of the Accused as determined under Section 5(c) of the Registry Policy;⁵

CONSIDERING that the Accused and the Accused’s spouse receive monthly pensions from the Government of Serbia and Montenegro;⁶

CONSIDERING that under the marital property regime of the Accused and his spouse, the pension of the Accused’s spouse constitutes marital property, owned jointly by the Accused and his spouse, and thus may be considered for the purpose of calculating the Accused’s disposable means;⁷

CONSIDERING that the Accused receives a monthly allowance from the government of Serbia and Montenegro as an accused who voluntarily surrendered to the Tribunal ;⁸

CONSIDERING that the incomes detailed above are included in the Accused’s disposable means in accordance with Article 8(B) of the Directive and Section 7 of the Registry Policy;⁹

CONSIDERING that the Accused receives a monthly welfare payment from the government of Serbia and Montenegro and that this welfare payment is excluded from the Accused’s disposable means in accordance with Article 8(B) of the Directive and Section 8(a) of the Registry Policy;¹⁰

CONSIDERING that in accordance with the Registry Policy, the estimated living expenses of the Accused and his spouse 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;¹¹

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\$ 42,726 and that as such he is partially able to remunerate counsel;¹²

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\$ 42,726 to the costs of his defence;

DECIDES that with the exception of the Accused's contribution of US\$ 42,726, 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 Mr Branislav Tapuskovic as counsel to the Accused permanently, effective 22 April 2005;

INFORMS the Accused and his counsel that the Accused's contribution of US \$ 42,726 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.

Hans Holthuis
Registrar

Dated this 31st day of May 2005
At The Hague,

The Netherlands

- 1 - Appendix II, Sections 2 and 11.
- 2 - Confidential *Ex Parte* Appendix I, paragraphs 5 to 11.
- 3 - Confidential *Ex Parte* Appendix I, paragraph 12 to 17.
- 4 - Confidential *Ex Parte* Appendix I, paragraphs 18 to 22.
- 5 - Confidential *Ex Parte* Appendix I, paragraphs 23 to 29.
- 6 - Confidential *Ex Parte* Appendix I, paragraphs 31 and 33.
- 7 - Law on Marriage and Family Relations of the Republic of Serbia, Article 321. Published in the Official Gazette of the Socialist Republic of Serbia no. 22/80, 11/88.
- 8 - Confidential *Ex Parte* Appendix I, paragraph 33.
- 9 - Confidential *Ex Parte* Appendix I, paragraphs 34 to 38.
- 10 - Confidential *Ex Parte* Appendix I, paragraph 32.
- 11 - Confidential *Ex Parte* Appendix I, paragraphs 40 and 4.
- 12 - Confidential *Ex Parte* Appendix I, paragraph 42.