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IT-05-88-PT

D465-D 447

25 NOVEMBER 2005

Case No. IT-05-88 PT

Prosecutor v. Drago Nikolić

DECISION

PARTLY CONFIDENTIAL *EX PARTE*

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, 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;

NOTING that Drago Nikolić (“Accused”) was transferred to the seat of the Tribunal on 17 March 2005 and that on 22 March 2005, the Deputy Registrar assigned Mr. Tjarda Eduard van der Spoel as duty counsel for the Accused;

CONSIDERING that on 3 May 2005, the Accused submitted a declaration of means to the Registry pursuant to Article 7(B) of the Directive, thereby requesting the assignment of Tribunal-paid counsel on the basis that he did not have sufficient means to remunerate counsel;

CONSIDERING that on 10 May 2005, acting pursuant to the Article 11(B) of the Directive, the Deputy Registrar assigned Ms Jelena Nikolić, Attorney at Law from Serbia and Montenegro, 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 Registry examined his declaration of means and conducted an inquiry into his ability to remunerate counsel;

CONSIDERING that on 24 August 2005, the Deputy Registrar assigned Mr Stéphane Bourgon, attorney at law from Canada, as co-counsel to Ms Nikolić;

CONSIDERING that on 12 October 2005, acting pursuant to Article 11(B) of the Directive, the Deputy Registrar extended the interim assignments of Ms Nikolić and Mr Bourgon for a period of 90 days pending the completion of the Registry's inquiry into the Accused's ability to remunerate counsel;

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 inquiry 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 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 the Accused, 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 not included in his disposable means because of the principal family home's extraordinarily low value;²

CONSIDERING that the Accused owns a parcel of land attached to his principal family home and that the equity therein is not included in his disposable means because it cannot reasonably be sold or mortgaged to raise money for the Accused's defence;³

CONSIDERING that the Accused receives a pension and a monthly allowance from the Government of Serbia and Montenegro as an accused who voluntarily surrendered to the Tribunal;⁴

CONSIDERING that the above are incomes and are included in the Accused's disposable means in accordance with Article 8(B) of the Directive and Section 7 of the Registry Policy;⁵

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;⁶

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.

¹ Appendix II, Sections 2 and 11.

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

³ Confidential *Ex Parte* Appendix I, paragraphs 11 to 13.

⁴ Confidential *Ex Parte* Appendix I, paragraph 15.

⁵ Confidential *Ex Parte* Appendix I, paragraphs 15, 17 and 18.

⁶ Confidential *Ex Parte* Appendix I, paragraphs 20 to 22.

CONSIDERING that by applying the formula $DM - ELE = C$, the Accused's contribution is US\$5,526 and that as such, he is able to remunerate counsel partially;⁷

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\$274,606;

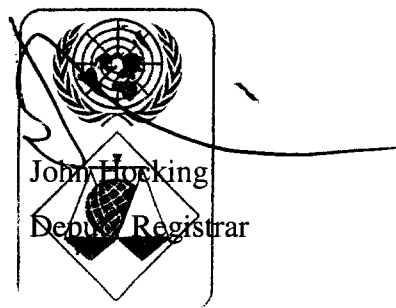
NOTING that as of today's date, it is not possible to accurately estimate the costs of the Accused's defence before the Tribunal at the trial stage;

DECIDES in light of the foregoing and in accordance with Article 11(A)(ii) of the Directive, that the Accused is able to remunerate counsel in part and that he shall contribute US\$5,526 to the costs of his defence before the Tribunal;

DECIDES that with the exception of the Accused's contribution of US\$5,526, 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 Jelena Nikolić as counsel to the Accused and Mr Stéphane Bourgon as co-counsel permanently, effective as of the date of this decision;

INFORMS the Accused and his counsel that the Accused's contribution of US\$5,526 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 25th day of November 2005

At The Hague,
The Netherlands.

⁷ Confidential *Ex Parte* Appendix I, paragraphs 23 and 24.