

INTERNATIONAL CRIMINAL TRIBUNAL  
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*Prosecutor v Zdravko Tolimir*  
Case No. IT-05-88/2-PT

IT-05-88/2-PT  
D 1126 - D 1114  
03 JUNE 2008

## DECISION

PARTLY CONFIDENTIAL AND *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 (“Rules”), and in particular Rules 44 and 45 thereof;

**NOTING** the Directive on the Assignment of Defence Counsel as adopted by the 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);

**NOTING** that Mr. Zdravko Tolimir (“Accused”) was transferred to the seat of the Tribunal on 1 June 2007;

**NOTING** the Deputy Registrar’s Decision of 4 June 2007 assigning Mr. Roger Sahota as counsel to represent the Accused at his initial appearance and in other necessary matters until a permanent counsel was assigned;

**CONSIDERING** that on 14 June 2007, the Accused submitted to the Registry a written request for legal aid, and also for the assignment of Mr. Nebojša Mrkić, attorney at law from Belgrade, as his lead defence counsel;

**CONSIDERING** that on 29 June 2007 the Registry informed the Accused that Mr. Mrkić could not be assigned as his lead counsel as he was not qualified for assignment pursuant to Rule 45 of the Rules;

**CONSIDERING** the Trial Chamber’s “Decision on Motion by the Accused for Review of the Registrar’s Decision of 29 June 2007”, in which the Trial Chamber upheld the Registrar’s decision to deny the request for the assignment of Mr. Mrkić as lead counsel;

**CONSIDERING** that on 10 August 2007 the Accused informed the Registrar that he had decided to represent himself in accordance with Rule 45(F) of the Rules;

**CONSIDERING** the Deputy Registrar's Notification to the Trial Chamber and the parties on 27 August 2008 of the Accused's election to conduct his own defence pursuant to Rule 45(F) of the Rules;

**NOTING** the Appeal Chamber's "Decision on Krajišnik Request and on Prosecution Motion" on 11 September 2007 in the *Prosecutor v. Momčilo Krajišnik*, in which it held that an indigent accused who chooses to exercise his right to represent himself in proceedings before the Tribunal is not entitled to receive legal aid funds, but may nevertheless receive some funding for legal associates whom the Registry has authorised to assist him in the preparation of his case ("Krajišnik Decision");

**CONSIDERING** that in light of the Krajišnik Decision, the Registry introduced the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused ("Payment Scheme") in order to facilitate the participation of a detained, self-represented accused in the proceedings against him;

**CONSIDERING** that to the extent that any procedural matters are not expressly regulated by the Payment Scheme, the Registrar applies the general rules of the Tribunal, in particular the Directive and any relevant Registry policy, as applicable;

**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 his defence team, 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[n] [...] accused, as well as those of persons with whom he habitually resides, provided that it is reasonable to take such means into account";

**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" ("Indigency Policy");<sup>1</sup>

**CONSIDERING** that the Registrar applies both the Directive and the Indigency Policy *mutatis mutandis* to self-represented accused seeking Tribunal funding of their defence teams, in accordance with paragraph 1.3. of the Remuneration Scheme;

**NOTING** that under the Indigency Policy, the Registrar first determines the disposable means of an applicant, 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 legal assistance before the Tribunal, the amount remaining being the contribution to be made by the applicant to the cost of his defence;<sup>2</sup>

<sup>1</sup> Attached as Appendix II.

<sup>2</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 Indigency 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>3</sup>

**CONSIDERING** that under the family law of the Republic of Serbia, the principal family home constitutes a marital property asset which is owned jointly by the Accused and his spouse;<sup>4</sup>

**CONSIDERING** that in accordance with Article 10(A) of the Directive and Section 7 of the Indigency Policy, income of the Accused, his spouse and the persons with whom he habitually resides is included in the Accused's disposable means;<sup>5</sup>

**CONSIDERING** that in accordance with Article 10(A) of the Directive and Sections 5 and 7 of the Indigency Policy, the equity in stocks, bonds or bank accounts as well as the equity in any other assets owned by the Accused, his spouse and the persons with whom he habitually resides, including cash, is included in the Accused's disposable means;<sup>6</sup>

**CONSIDERING** that the estimated living expenses of the Accused's household during the estimated period in which the Accused will require legal assistance before the Tribunal have been calculated in accordance with Section 10 of the Indigency Policy;<sup>7</sup>

**CONSIDERING** that in determining the extent to which the Accused is able to remunerate his defence team, the Registrar applies the formula in Section 11 of the Indigency Policy, which reads:

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

Where:

**DM** represents an applicant's disposable means as calculated under Sections 5-8 of the Indigency 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 Indigency Policy;

**C** represents the contribution to be made by an applicant to the cost of his defence;

**CONSIDERING** that by applying the aforementioned formula, the Registrar finds that the Accused is able to remunerate his defence team in part;<sup>8</sup>

**DECIDES** in view of the foregoing, and pursuant to Annex I to this decision, the Accused shall contribute €16,949 to the cost of his defence before the Tribunal;<sup>9</sup>

<sup>3</sup> Confidential *Ex Parte* Appendix I ("Appendix I"), paras. 5 to 11.

<sup>4</sup> Family Law of the Republic of Serbia, Article 171(1), Official Journal of Serbia, no. 18/2005.

<sup>5</sup> Appendix I at paras. 12 to 19.

<sup>6</sup> *Ibid.* at paras. 22 to 30.


<sup>7</sup> *Ibid.* paras. 31 to 33.

<sup>8</sup> *Ibid.* para. 34.

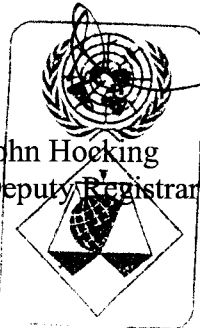
<sup>9</sup> *Ibid.* paras. 35 to 40.

**DECIDES** that with the exception of the Accused's contribution of €16,949, the expenses referred to in Articles 23, 26, 27 and 28 of the Directive, as applicable to a self-represented accused and in accordance with the Payment Scheme, shall be borne by the Tribunal;

**INFORMS** the Accused and his legal associates that the Accused's contribution of €16,949 will be deducted from the maximum allocations available to the Accused's defence team, in a manner to be agreed upon by the Registrar and the Accused and his legal associates.



John Hocking  
Deputy Registrar



Dated this twenty-ninth day of May 2008,  
At The Hague,  
The Netherlands.