

UNITED
NATIONS



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No.: IT-03-69-PT

Date: 17 May 2004

Original: English

IT-03-69-PT
D 3437 - D 3417
17 May 2004

3437
MB.

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Albertus Swart

Deputy Registrar: David Tolbert

Decision of: 17 May 2004

PROSECUTOR

v.

FRANKO SIMATOVIĆ

Partly Confidential and *Ex Parte*

**DECISION OF THE REGISTRY ON ASSIGNMENT OF COUNSEL AND THE
EXTENT TO WHICH THE ACCUSED IS ABLE TO REMUNERATE COUNSEL**

Counsel for the Prosecutor:
Carla Del Ponte

Counsel for the Defence:
Mr Zoran Jovanović for Franko Simatović

IT-03-69-PT

17 May 2004

DECISION

THE DEPUTY REGISTRAR,

CONSIDERING the Statute of the Tribunal as adopted by the Security Council under Resolution 827 (1993), and in particular Article 21 thereof;

CONSIDERING the Rules of Procedure and Evidence (hereinafter "Rules") as adopted by the Tribunal on 11 February 1994, as subsequently amended, and in particular Rules 44 and 45 thereof;

CONSIDERING the Directive on Assignment of Defence Counsel (hereinafter "Directive"), as adopted by the Tribunal on 28 July 1994, as subsequently amended, and in particular, Articles 8, 10, 11(A) and 18 thereof;

CONSIDERING that on 14 July 2003, Franko Simatović (hereinafter "Accused") requested that Mr Zoran Jovanović, attorney at law from Belgrade, be assigned as his counsel;

CONSIDERING that on 18 July 2003, the Registrar assigned Mr Jovanović as lead counsel to the Accused for a period of 120 days, effective as of 21 July 2003, pending verification of the Accused's means pursuant to Article 10(A) of the Directive;

CONSIDERING that on 1 August 2003, the Accused submitted a declaration of means to the Registry, claiming legal aid on the basis that he did not have sufficient means to remunerate counsel;

CONSIDERING that on 26 November 2003, the Registry had not completed its inquiry into the means of the Accused, and extended the assignment of Mr Jovanović as counsel to the Accused for a period of 90 days, pending verification of the Accused's declaration of means;

CONSIDERING that on 8 March 2004, the Registry had not completed its inquiry into the means of the Accused, and extended the assignment of Mr. Jovanović as counsel to the Accused for a period of 90 days from 16 February 2004, pending verification of the Accused's declaration of means;

CONSIDERING the information provided by the Accused in his declaration of means and the evidence gathered by the Registry during an inquiry into the Accused's means pursuant to Article 10(A) of the Directive;

CONSIDERING that according 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 Accused has a partner (hereinafter "Accused's spouse" as within the definition included in the "Registry Policy for Determining the Extent to which a Suspect or an Accused is able to Remunerate Counsel" - hereinafter "Registry Policy" – Appendix II to this Decision), a child who resides in his home, and a mother also residing in his home and with whom the Accused has a relationship of financial co-dependence (together, "persons with whom the Accused habitually resides");

Registry Policy

CONSIDERING that the eligibility of an accused for legal aid is determined according to the Registry Policy;

NOTING that according to the Registry Policy, the Registry deducts from an applicant's disposable means the estimated living expenses of his family and dependents during the estimated period in which the applicant will require representation before the International Tribunal, the amount remaining being the contribution to be made by the applicant to his defence;¹

Principal Family Home

CONSIDERING that the Accused owns an apartment in Belgrade, Serbia and Montenegro (hereinafter "principal family home");²

NOTING that according to the Registry Policy, the Registry includes in an applicant's disposable means the equity in the principal family home to the extent that the principal family home exceeds the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides;³

CONSIDERING that the Accused's principal family home does exceed the reasonable needs of the Accused, his spouse and the persons with whom he habitually resides, and therefore is included in the Accused's disposable means to the extent that it exceeds those reasonable needs;⁴

Furnishings in the Principal Family Home

NOTING that according to the Registry Policy, the Registry excludes from an applicant's disposable means the equity in furnishings in the principal family home unless those furnishings exceed the reasonable needs of the applicant, his spouse and the persons with whom he habitually resides;⁵

CONSIDERING that the furnishings in the Accused's principal family home do not exceed the reasonable needs of the Accused, his spouse and the persons with whom he habitually resides and are therefore not included in the Accused's disposable means;⁶

¹ Appendix II Sections 2, 11, 12

² Appendix I, paragraph 7

³ Appendix II, Section 5 (a)

⁴ Appendix I, paragraph 10

⁵ Appendix II, Section 5 (b)

⁶ Appendix I, paragraph 14

Real Property other than the Principal Family Home

CONSIDERING that the Accused owns one weekend house in Pričević, Serbia and Montenegro (hereinafter "property in Pričević") and one weekend house in Bajina Bašta (hereinafter "property in Bajina Bašta");⁷

CONSIDERING that according to the Registry policy, the Registry includes in an applicant's disposable means the equity in any real estate other than the principal family home;⁸

CONSIDERING that the equity in the properties owned by the Accused in Pričević and Bajina Bašta is included in the Accused's disposable means;⁹

Income

CONSIDERING that the Accused receives a monthly pension and a monthly allowance from the Government of Serbia and Montenegro;¹⁰

CONSIDERING that the Accused's mother, who resides in the principal family home and with whom the Accused has a relationship of financial co-dependence also receives a monthly pension;¹¹

NOTING that according to the Registry Policy, the Registry includes in an applicant's disposable means income of the applicant, his spouse and the persons with whom he habitually resides and that such income is calculated on the basis that it will continue to be received from the date the Registry files its decision on the extent to which an applicant is able to remunerate counsel until the conclusion of the estimated period in which the applicant will require representation before the International Tribunal;¹²

CONSIDERING that the combined income expected to be received by the Accused, his spouse and the persons with whom he habitually resides from the date of this decision 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;¹³

Application of Formula

CONSIDERING that in determining the extent to which an applicant is able to remunerate counsel, the Registry applies the formula in Section 11 of the Registry Policy, which reads:

$$DM - ELE = C$$

Where:

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

⁷ Appendix I, paragraphs 15, 19

⁸ Appendix II, Section 5 (c)

⁹ Appendix I, paragraphs 17, 20

¹⁰ Appendix I, paragraph 24, 25

¹¹ Appendix I, paragraph 26

¹² Appendix II, Section 7

¹³ Appendix I, paragraph 33

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

Accused's Contribution

CONSIDERING that in applying the formula $DM - ELE = C$, the Accused's contribution is US \$145,196 and as such he is partially able to remunerate counsel;¹⁴

DECIDES in light of the foregoing and in accordance with article 11(A)(ii) of the Directive, that the Accused shall contribute US \$145,196 to his defence costs during the pre-trial and trial stages and that the Registry shall deduct US \$145,196 from allocations paid to the Accused's defence team during the pre-trial stage and trial stages;

DECIDES further, that with the exception of Accused's contribution of US \$145,196, the expenses referred to in Articles 22, 26 and 27 of the Directive shall be borne by the Tribunal;

Assignment of Counsel

DECIDES in light of the foregoing, without prejudice to Article 18 of the Directive and pursuant to Article 11(A)(i) of the Directive to assign Mr Zoran Jovanović as counsel to the Accused permanently.

David Tolbert
Deputy Registrar

Dated at 17th day of May 2004
At The Hague
The Netherlands

¹⁴ Appendix I, paragraph 38