



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

IT-04-84-R77.5-A
A84-A80
21 March 2011

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Case No. IT-04-84-R77.5-A

Date: 21 March 2011

Original: English

IN THE APPEALS CHAMBER

Before: Judge Andréia Vaz, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Theodor Meron

Registrar: Mr. John Hocking

Order of: 21 March 2011

PROSECUTOR

v.

BATON HAXHIU

PUBLIC

**ORDER ON THE REGISTRAR'S APPLICATION PURSUANT
TO RULE 45(E) OF THE RULES**

The Office of the Prosecutor:

Ms. Barbara Goy
Ms. Laurel Baig

Baton Haxhiu

THE APPEALS CHAMBER of the 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 (“Appeals Chamber” and “Tribunal”, respectively):

NOTING the “Judgement on Allegations of Contempt” rendered against Baton Haxhiu by Trial Chamber I of the Tribunal on 24 July 2008, in which Mr. Haxhiu was found guilty of contempt of the Tribunal and sentenced to a fine of Euros 7,000;¹

NOTING that, on 4 September 2008, the Appeals Chamber rejected Mr. Haxhiu’s Notice of Appeal as inadmissible;²

BEING SEISED OF the “Registry Application Pursuant to Rule 45 (E) Concerning the Recovery of Legal Aid Funds”, filed on 31 December 2010 (“Registry Application”), in which the Registry of the Tribunal (“Registry”) submits that Mr. Haxhiu has been found to have sufficient means to fully remunerate counsel,³ and requests the Appeals Chamber to “make an order of contribution to Mr. Haxhiu to reimburse the Tribunal in the amount of €12,122.80 for defence costs incurred as a result of his legal aid funded representation before the Tribunal”;⁴

RECALLING that, under Article 21(4)(d) of the Statute of the Tribunal, an accused before the Tribunal has the right to have legal assistance assigned without payment by him where that accused does not have sufficient means to pay for it;

RECALLING that an accused’s ability to remunerate counsel is determined by the Registrar of the Tribunal (“Registrar”) pursuant to Article 10 of the Directive on the Assignment of Defence Counsel⁵ and the Registry Policy for Determining the Extent to Which an Accused is Able to Remunerate Counsel;⁶

NOTING that Mr. Christian Kemperdick was temporarily assigned as counsel to represent Mr. Haxhiu for a period of 120 days, pursuant to Article 11(B) of the Directive, pending the Registry’s determination of his ability to remunerate counsel;⁷

¹ *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008, para. 40.

² Decision on Admissibility of Notice of Appeal Against Trial Judgement, 4 September 2008, Disposition.

³ Registry Application, para. 13.

⁴ Registry Application, para. 17.

⁵ Directive on the Assignment of Defence Counsel (Directive No. 1/94), 11 July 2006 (“Directive”).

⁶ See Registry Application, Appendix 1 (Registry Policy for Determining the Extent to Which an Accused is Able to Remunerate Counsel of 8 February 2007).

⁷ *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5, Decision of the Deputy Registrar, 26 May 2008, p. 2. On 22 May 2008, Mr. Haxhiu applied for legal aid by submitting a “Declaration of Means” to the Registry, pursuant to Article 7 of the Directive. See Registry Application, para. 3. On 30 March 2009, Mr. Kemperdick responded, on behalf

NOTING that on 28 October 2009, following an inquiry into Mr. Haxhiu's means pursuant to Article 9 of the Directive, the Registry determined that Mr. Haxhiu was "fully able to remunerate counsel" and accordingly found him ineligible for legal aid pursuant to Article 11(A)(iii) of the Directive;⁸

NOTING that the Registry Decision of 28 October 2009 was communicated to Mr. Kemperdick on the same day,⁹ and that an Albanian version of the Registry Decision of 28 October 2009 was filed on 24 November 2009 and communicated to Mr. Kemperdick on the same day;¹⁰

NOTING that the Registry sent letters to Mr. Haxhiu and Mr. Kemperdick on 7 December 2009 ("7 December 2009 Letter") and on 11 January 2010 (collectively, "Letters"), in which it noted the issuance of the Registry Decision of 28 October 2009;¹¹

NOTING that, in the 7 December 2009 Letter, the Registry indicated that it "ha[d] been informed that [Mr. Haxhiu] did not receive a copy of the [Registry] Decision [of 28 October 2009], translated into Albanian, until 4 December 2009";¹²

CONSIDERING that, pursuant to Article 13(B) of the Directive, an "accused whose request for assignment of counsel has been denied [...] may within fifteen days from the date upon which he is notified of that decision, file a motion to the Chamber before which he is due to appear for review of the Registrar's decision";

NOTING that Mr. Haxhiu did not seek the review of the Registry Decision of 28 October 2009;

of Mr. Haxhiu, to a Registry letter that informed Mr. Haxhiu about the findings of the Registry's inquiry into his financial status and provided him with an opportunity to comment on those findings before the issuance of a decision on his eligibility for legal aid. See Letter dated 30 March 2009 from Mr. Kemperdick to the Head of the Office for Legal Aid and Detention Matters ("OLAD"). See Decision of the Deputy Registrar, 28 October 2009 (public with partly confidential and *ex parte* appendices) ("Registry Decision of 28 October 2009"), Appendix I (confidential and *ex parte*), paras 6, 25, 29; Letter dated 2 March 2009, Re: Opportunity to comment on the Registry's findings in relation to your financial status, from the Head of OLAD to Mr. Haxhiu.

⁸ Registry Decision of 28 October 2009, p. 3. The Registry also decided that "within 30 days of the date of this decision, the Accused shall reimburse the Tribunal in the amount of € 12,122.80 for defence costs so incurred". Registry Decision of 28 October 2009, p. 3.

⁹ See E-mail dated 28 October 2009 from the Registry (Court Management and Support Section ("CMSS")) to Mr. Kemperdick.

¹⁰ See E-mail dated 24 November 2009 from the Registry (CMSS) to Mr. Kemperdick. The Appeals Chamber notes that, in his Request for Assignment of Counsel, Mr. Haxhiu indicated that he speaks Albanian, English, and Serbian. See Request for Assignment of Counsel, 22 May 2008 (confidential).

¹¹ See Letter dated 7 December 2009 from the Acting Deputy Head of OLAD to Mr. Haxhiu; Letter dated 11 January 2010 from the Acting Deputy Head of OLAD to Mr. Haxhiu. See also E-mail dated 8 December 2009 from the Registry (OLAD) to Mr. Kemperdick; E-mail dated 12 January 2010 from the Registry (OLAD) to Mr. Kemperdick.

¹² In the Letters, the Registry also postponed the deadline for Mr. Haxhiu's compliance with the Registry Decision of 28 October 2009.

NOTING that Mr. Haxhiu has not reimbursed the Tribunal for the costs associated with his legal representation in the contempt proceedings against him;

CONSIDERING that, pursuant to Rule 45(E) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) “[w]here a person is assigned counsel and is subsequently found not to be lacking the means to remunerate counsel, the Chamber may, on application by the Registrar, make an order of contribution to recover the cost of providing counsel”;

NOTING that the Registry Application has been communicated to Mr. Kemperdick but that it is unclear whether it has also been received by Mr. Haxhiu;¹³

FOR THE FOREGOING REASONS,

PURSUANT to Rule 45(E) of the Rules,

HEREBY ORDERS Mr. Haxhiu to reimburse the Tribunal the amount of Euros 12,122.80 for the cost it sustained in providing him with legal counsel before the Tribunal. This amount shall be paid to the Registrar within 30 days of the date of the notification of this order. Alternatively, Mr. Haxhiu is allowed, if he so wishes, to pay such amount in two equal instalments by, respectively, the fifteenth and sixtieth day following notification of this order;

INSTRUCTS the Registrar to serve this order upon Mr. Haxhiu as soon as possible;

INSTRUCTS the Registrar to inform the Appeals Chamber when this order has been served on Mr. Haxhiu and to provide the relevant proof of service, or to provide a reasoned explanation in case he cannot comply with this instruction; and

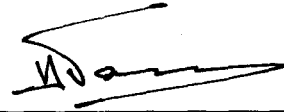
¹³ See E-mail dated 31 December 2010 from the Registry (CMSS) to Mr. Kemperdick. On 22 February 2011, Mr. Kemperdick informed the Tribunal that he had not heard from Mr. Haxhiu for a long time. See E-mail dated 22 February 2011 from Mr. Kemperdick to a Legal Officer of the Appeals Chamber. On 24 February 2011, in a telephonic communication with the same Legal Officer, Mr. Kemperdick indicated that he no longer represents Mr. Haxhiu and that he cannot confirm whether the Registry Application was sent to Mr. Haxhiu.

INSTRUCTS the Registrar to take the necessary measures to enforce this order.

Done in English and French, the English text being authoritative.

Dated this 21st day of March 2011,

At The Hague,
The Netherlands.



Judge Andréia Vaz
Presiding

[Seal of the Tribunal]