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T-06-90-PT

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28 September 2007

Case No. IT-06-90-PT

*Prosecutor v. Ivan Čermak*

## DECISION

## PUBLIC

## THE DEPUTY REGISTRAR,

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

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

**NOTING** the Code of Professional Conduct for Counsel Appearing Before the International Tribunal (IT/125 REV.2) ("Code of Conduct");

**NOTING** that Ivan Čermak ("Accused") was transferred to the seat of the Tribunal on 11 March 2004;

**CONSIDERING** that on 11 March 2004, the Accused executed a power of attorney authorizing Mr. Čedo Prodanović, attorney at law from Croatia, to act on his behalf in proceedings before the International Tribunal and stated that he would not apply for Tribunal legal aid;

**CONSIDERING** that on 12 March 2004, the Accused executed another power of attorney authorizing Ms. Jadranka Sloković, attorney at law from Croatia, to act on his behalf in proceedings before the International Tribunal;

**NOTING** that on 20 February 2006, the Prosecution filed a consolidated motion to amend the Indictments against the Accused, Mladen Markač and Ante Gotovina and to jointly charge and try these three accused ("Prosecution Motion");

**NOTING** that on 4 April 2006, the accused Ante Gotovina ("Gotovina") filed his "[...] Response in Opposition to the Prosecution's Consolidated Motion to Amend the Indictment and for Joinder", opposing the Prosecution Motion, arguing, *inter alia*, that the joinder would create a conflict of interest since the Accused's counsel also represented Rahim Ademi, who Gotovina intended to call as a witness "critical to his defence";

**NOTING** that on 14 July 2006, the Trial Chamber issued its "Decision on Prosecution's Consolidated Motion to Amend the Indictment and for Joinder" ("14 July 2006 Decision"), concluding that there was "no factual basis on which it is demonstrated that a conflict of interest will arise between the two accused" and ordering that the case of *Prosecutor v. Ante Gotovina*, case No. IT-01-45-PT, and the case of *Prosecutor v. Ivan Čermak and Mladen Markač*, case No. IT-03-73-PT, be jointly tried;

**NOTING** that on 25 October 2006, the Appeals Chamber issued its “Decision on Interlocutory Appeals against the Trial Chamber’s Decision to Amend the Indictment and for Joinder” (“Decision of 25 October 2006”), in which it confirmed the 14 July 2006 Decision, and held, *inter alia*,

- 1) that “it is not certain at this stage in the proceedings that Prodanović’s and Sloković’s duty of loyalty to Čermak will be compromised because they will be unable to effectively cross-examine their other client, Ademi, due to a desire to avoid causing Ademi to incriminate himself”;
- 2) that “even if a conflict of interests does arise, [...] it will most likely exist for Prodanović and Sloković with regard to their simultaneous representation of Čermak and Ademi, regardless of joinder of Čermak’s case with Gotovina’s”;
- 3) and that “nothing prevents Čermak from choosing other counsel able to represent him. [...] [A]lthough Prodanović and Sloković have represented Čermak for over two years [...] his case is not ready for trial [...] and there is no reason to anticipate that a start date for the trial is imminent. Thus, any prejudice arising from having new counsel at this stage in the proceedings may be mitigated by the Trial Chamber by allowing the new counsel additional time for briefing themselves on the defence case so far.”

**NOTING** that on 8 February 2007, counsel for the Accused filed a “Notice to the Trial Chamber Concerning Undertakings Provided by Ivan Čermak and Rahim Ademi” (“Notice of Undertakings”) by which both clients undertook not to raise their counsel’s dual representation as a legal impediment affecting their respective right to a fair trial;

**CONSIDERING** that on 5 April 2007, the Trial Chamber issued its “Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković” (“Decision on Conflict of Interest”) and held that the representation of both the Accused and Mr Ademi by Mr. Prodanović and Ms. Sloković raised a conflict of interest under Article 14(D)(i) of the Code of Conduct and ordered them to withdraw as counsel from the case, but held that both counsel should stay on the case until such time as a new defence team is able to certify that it can take over the Accused’s defence;

**CONSIDERING** that on 29 June 2007, the Appeals Chamber issued its “Decision on Ivan Čermak’s Interlocutory Appeal against Trial Chamber’s Decision on Conflict of Interest of Attorney’s Čedo Prodanović and Jadranka Sloković” (“Appeal Chamber’s Decision on Conflict of Interest”) upholding the Trial Chamber’s Decision on Conflict of Interest;

**CONSIDERING** that on 6 September 2007, the Accused executed a power of attorney authorizing Mr. Steven Kay, QC from the United Kingdom, to act on his behalf in proceedings before the International Tribunal;

**CONSIDERING** that the Registry is satisfied that Mr. Kay fulfills the qualification requirements of Rule 44 of the Rules and that there is no impediment to his admission as counsel for the Accused;



**NOTING** that on 27 September 2007, Mr. Kay submitted a written certification to the Registrar, stating that he is able and willing to take over the Accused’s defence;

**NOTING** Mr. Kay’s obligations under the Statute, the Rules, and the Code of Conduct;

**DECIDES** pursuant to Rule 44(A) of the Rules, to admit Mr. Kay to represent the Accused before the Tribunal, effective as of the date of this decision;

**DECIDES** to revoke Mr. Prodanović's and Ms. Sloković's admission as counsel for the Accused before the Tribunal in Case No. IT-06-90-PT;

**DIRECTS** Mr. Prodanović and Ms. Sloković, in accordance with their duty under Article 9(D) of the Code of Conduct, to hand over to Mr Kay any case-related materials they received from the International Tribunal forthwith.

  
John Spink  
Deputy Registrar  


Dated this 27<sup>th</sup> day of September 2007  
At The Hague,  
The Netherlands.