

IF-95-5/18-PT
D 13962 - D 13958
03 APRIL 2009

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THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-PT

IN TRIAL CHAMBER No. 3

Before: Judge Iain Bonomy, Presiding
Judge Michele Picard
Judge Christoph Flugge

Acting Registrar: Mr. John Hocking

Date Filed: 3 April 2009

THE PROSECUTOR

v.

RADOVAN KARADŽIĆ

Public

REPLY TO REGISTRY SUBMISSION REGARDING
THE DENIAL OF ASSIGNMENT OF MARKO SLADOJEVIĆ

The Office of the Prosecutor:
Mr. Allan Tieger
Mr. Mark Harmon
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadžić

1. Dr. Radovan Karadžić respectfully seeks leave to reply to “Registry submission regarding the denial of Marko Sladojević’s appointment” [hereinafter “Registry Submission”].
2. In its submission of 27 March 2009, the Registrar repeats the arguments already stated in the Registry impugned decisions, namely that Mr. Sladojević may have been privy to confidential information in Mr. Momčilo Krajišnik’s case, and that the possibility that he could inadvertently disclose such information to Dr. Karadžić could not be excluded.¹
3. However, as was the case with the impugned decision, the Registrar merely enumerates the arguments presented by Dr. Karadžić without addressing the majority of them.² Instead, the Registrar focuses on the “probability” that Mr. Sladojević could face conflicting loyalties between Mr. Krajišnik and Dr. Karadžić.
4. Dr. Karadžić wishes to comment briefly that the case of Mr. Sladojević does not involve the “probability” of conflict of interest, but a remote “possibility”, as is demonstrated by the wording of the Registry while setting out its concerns.³ Furthermore, the Registrar states that as a result of the possible conflict of interest, Mr. Sladojević may find himself unable to effectively undertake the coordination and legal consultation required of a legal associate.⁴
5. It is submitted that this is further proof that the Registry did not take into consideration the relevant material while deciding the request for assignment. Firstly, in his letter to the Registrar of 11 February 2009, Mr. Sladojević explained that his proposed main, and ostensibly only, task during the pre-trial phase is supposed to be reviewing the Prosecution supporting and disclosed material, discussing the contents of such material with Dr. Karadžić in light of his Indictment, and helping him to organise this vast amount of documents

¹ See paras 6 and 8 of the Registry Submission

² Issues that the Registrar did not touch upon are: Mr. Sladojević’s letter explaining the nature of his work; the fact that the denial of Mr. Sladojević’s appointment would significantly slow down Dr. Karadžić’s pre-trial preparations and require the postponement of the trial; the fact that any alternative candidate would require more time to familiarise him/herself with the issues relevant to Dr. Karadžić’s case, resulting in an additional burden to the efficient management of public funds.

³ Registry submission para 6: “Mr. Sladojević **may** have been privy to confidential information”; Registry submission para 8: “There **may** be confidential information in the Krajišnik case of which [Mr. Sladojević] **may** be aware”. [Emphasis added] See also the impugned Decision of the Registry.

⁴ Registry submission para 8

involved. Additionally, he would help Dr. Karadžić with the electronic processing of case-related information because he is much more skilled in the relevant computer programmes and ICTY software. This kind of work could not and will not involve using confidential information that Mr. Sladojević may have obtained from Mr. Krajišnik. Therefore, Mr. Sladojević could be considered as a “factual” associate, the only member of Dr. Karadžić’s team at this stage that would deal with factual issues in the case.

6. The Registrar’s assertion that Mr. Sladojević would find himself unable to undertake the coordination and legal consultation is erroneous because the coordination is done by legal associate Mr. Goran Petronijević, whereas legal consultation is provided by Mr. Peter Robinson. Mr. Sladojević is a third, missing member in Dr. Karadžić’s team of associates.
7. The Registrar further argues that in the case of a represented accused, lead counsel would take responsibility for ensuring that strict confidentiality parameters are respected and that in the event of inadvertent disclosure, lead counsel undertakes not to use such confidential information.⁵ However, contrary to the Registrar’s assertion that with respect to legal associates to self-represented accused, there is no regulatory mechanism through accountability of counsel, Dr. Karadžić respectfully submits that the Tribunal has well-established and effective mechanisms for protection of confidential information. Firstly, legal associates are required to sign an undertaking that they would not disclose confidential information involved in the case and conduct themselves at all times in accordance with the professional and ethical standards of the legal profession. Secondly, self-represented accused are also under obligation to observe and protect the confidentiality of information. Thirdly and in addition to the preventive mechanisms, the Tribunal also has an effective sanctioning mechanism in cases where the confidentiality rules are breached. Recent *Šešelj* and *Hartman* cases have demonstrated the effectiveness of the Tribunal sanctioning mechanism. Self-representation does not involve unrestricted use of confidential information and Dr. Karadžić is well aware of his obligations.

⁵ Registry Submission, para 11

8. The Registrar further argues that the *Krajišnik* case could potentially be reopened in further review proceedings.⁶ This argument reveals the Registrar's hypothetical and unreasonable concerns as opposed to the actual and clear advantages that Mr. Sladojević's appointment would bring to the case. Use of Rule 119 of the Tribunal Rules of Procedure and Evidence is extremely exceptional, as is apparent from the ICTY jurisprudence.⁷ To deny Mr. Sladojević's appointment and his clearly significant contribution to the case on this ground would be absolutely unreasonable and would cause improper administration of justice. Even in the most extreme case that the *Krajišnik* case is reopened, the Registry hypothetical concerns would be allayed by Mr. Sladojević's withdrawal from the case.
9. The Registrar did not take into consideration the relevant material set out in Dr. Karadžić's Request for Judicial Review filed on 24 March 2009⁸, since nowhere in either OLAD or the Registrar's decisions the issues raised by Dr. Karadžić were discussed. Instead, the Registry hides behind the Appeals Chamber's general statements and principles in *Kvočka* by merely repeating the hypothetical conflict of interest and standards set out in the said decision. Proper administration of justice means engaging in a constructive dialogue with the accused and trying to find a mutually suitable solution.⁹ Dr. Karadžić and Mr. Sladojević tried to resolve the issue with the Registrar constructively and offered solutions to the dispute.¹⁰ However, the

⁶ Registry Submission para 13

⁷ *Prosecutor v Josipovic*, No. IT-95-16-R3, *Decision on Motion for Review* (2 April 2004); *Prosecutor v Josipovic*, No. IT-95-16-R2, *Decision on Second Motion for Review* (7 March 2003) at para. 12; *Prosecutor v Tadic*, No. IT-94-1-R, *Decision on Motion for Review* (30 July 2002) at para. 20.; *Prosecutor v Josipovic*, No. IT-95-16-R2, *Decision on Second Motion for Review* (7 March 2003) at para. 13; *Prosecutor v Blagojevic*, No. IT-02-60-R, *Decision on Vidoje Blagojevic's Request for Review* (15 July 2008) at para. 4; *Prosecutor v Radic*, No. IT-98-30/1-R1, *Decision on Defence Request for Review* (31 October 2006) at para. 22; *Prosecutor v Blaskic*, No. IT-95-14-R, *Decision on Prosecutor's Request for Review or Reconsideration* (23 November 2006) at para. 17; *Prosecutor v Blagojevic*, No. IT-02-60-R, *Decision on Vidoje Blagojevic's Request for Review* (15 July 2008) at para. 7; *Prosecutor v Blagojevic*, No. IT-02-60-R, *Decision on Vidoje Blagojevic's Request for Review* (15 July 2008) at para. 9; *Prosecutor v Josipovic*, No. IT-95-16-R2, *Decision on Second Motion for Review* (7 March 2003) at para. 15; *Prosecutor v Blaskic*, No. IT-95-14-R, *Decision on Prosecutor's Request for Review or Reconsideration* (23 November 2006) at para. 23

⁸ Request for Judicial Review of the Registry decision on the assignment of Mr. Marko Sladojević as legal associate, paras 14-22

⁹ Such as for example proposing Mr. Peter Robinson who is qualified under Rule 45 and subject to the Code of Conduct as a "supervisor" and responsible for the protection of confidential information.

¹⁰ Mr. Sladojević wrote to the Acting Registrar explaining that: "[A]lthough I do not expect any conflict of interest issues to arise, I would nevertheless like to emphasize that should Dr. Karadžić wish me to undertake work which raise a potential conflict, I will advise him that I cannot perform that work without disclosing to him the reasons. As mentioned above, Dr. Karadžić is already assisted by two other experienced legal associates who can, if need be, deal with such issues. In addition, should any unlikely conflict of interest matter arise, I will additionally undertake to discuss such a matter with Messrs. Alan and Nathan Dershowitz who represent Mr. Krajišnik on matters of JCE."

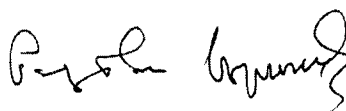
Registry failed to engage in a practical and helpful discussion and merely disregarded solutions and modalities other than simple, unreasonable denial of Mr. Sladojević's appointment. Dr. Karadžić hereby reiterates that he remains open for further dialogue with the Registry about the involvement of Mr. Sladojević on his team that would be beneficial to all parties concerned.

10. The Registrar justifies applying a different standard from that applied to co-counsel in the *Popović et al* case on the grounds that the accused represents himself. This is yet another penalty it is imposing for Dr. Karadžić's exercise of his right to self-representation. In reality, there is no difference. As co-counsel, the *Popović et al* lawyers can meet with the accused without the presence of the lead counsel. And, as in the case of a represented accused, Dr. Karadžić already has assigned, as a member of his team, a person qualified under Rule 45 and subject to the Code of Conduct who could be responsible in the same way as lead counsel for a represented accused.

11. For the foregoing reasons and the reasons set out in the Request for Judicial Review, Dr. Karadžić requests the Trial Chamber to instruct the Registry to appoint Mr. Sladojević as his legal associate.

Word count: 1619

Respectfully submitted,



Dr. Radovan Karadžić