



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-95-5/18-T
Date: 8 April 2013
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 8 April 2013

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION OF THE PRESIDENT ON THE COMPLAINT OF
MILAN MARTIĆ REGARDING THE ASSIGNMENT OF
COUNSEL**

The Office of the Prosecutor:

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadžić

Witness and Complainant:

Milan Martić

I, THEODOR MERON, President 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 (“Tribunal”);

NOTING the “Complaint against the Decision of the Registry Denying the Request to Assign Defence Counsel” (“Complaint”), filed by Milan Martić (“Martić”) on 19 March 2013, in which Martić, *inter alia*, challenges the decision of the Registrar of the Tribunal (“Registrar”) to deny Martić’s request for the assignment and remuneration of Predrag Milovančević (“Milovančević”), an attorney at law, in order to represent and advise Martić in connection with his testimony in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T (“Registrar’s Decision”);

NOTING that the Complaint was originally filed before Trial Chamber III of the Tribunal (“Trial Chamber”), which is seised of the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, but was forwarded to me pursuant to an oral decision of the Trial Chamber, announced on 22 March 2013;¹

NOTING the “Submission in Support of Milan Martić[’]s Appeal on Assignment of Counsel”, filed by Radovan Karadžić (“Karadžić”) on 20 March 2013 (“Karadžić Submission”), in which Karadžić, *inter alia*, expresses his support of Martić’s request that the Registrar assign and remunerate Milovančević to represent Martić during his testimony in the *Karadžić* case;

NOTING the “Registry Submission Pursuant to Rule 33(B) on the Complaint of Milan Martić Regarding the Assignment of Counsel” (“Registrar’s Submission”), filed publicly with confidential and *ex parte* annexes by the Registrar on 25 March 2013, in which the Registrar states that the denial of the assignment of Milovančević as Tribunal-paid counsel to Martić was, *inter alia*, based on the fact that Milovančević is not currently admitted to the Registrar’s list of counsel eligible for such an assignment pursuant to Rule 45 of the Rules of Procedure and Evidence of the Tribunal (“Rule 45 List” and “Rules”, respectively);²

NOTING that Martić did not reply to the Registrar’s Submission;

CONSIDERING that Karadžić is not a party to the proceeding between Martić and the Registrar and therefore has no standing to file a submission relating to the Complaint;³

¹ See T. 22 March 2013 p. 35852.

² Registrar’s Submission, paras 10-11.

³ See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR77.1, Decision on Vojislav Šešelj’s Appeal Against the Trial Chamber’s Decision of 19 July 2007, 14 December 2007, p. 3, and authorities cited therein; *Prosecutor v. Ante Gotovina et al.*, Case No. IT-06-90-AR73.2, Decision on Ivan Čermak’s Interlocutory Appeal Against Trial Chamber’s Decision on Conflict of Interest of Attorneys Čedo Prodanović and Jadranka Sloković, 29 June 2007, para. 12

CONSIDERING that Karadžić has not sought leave to file the Karadžić Submission or provided reasons why his submission should be considered in the interests of justice;⁴

FURTHER NOTING the Registrar's contention that the Complaint is not properly before the President of the Tribunal under Article 15(C) of the Tribunal's Directive on the Assignment of Defence Counsel ("Directive")⁵ and Rule 44(B) of the Rules, because the Registrar never issued a decision on Milovančević's admission to the Rule 45 List;⁶

CONSIDERING that the President's authority, under Article 13 of the Directive, to review decisions by the Registrar regarding the assignment of counsel to suspects and accused persons applies by analogy to persons detained under the authority of the Tribunal, including persons detained under Rule 90 *bis* of the Rules, as these persons too have the right to be assisted by counsel according to Article 5(iii) of the Directive and Rule 90 *bis* of the Rules;⁷

CONSIDERING that, in any event, the President of the Tribunal has the general authority to review administrative decisions taken by the Registrar;⁸

CONSIDERING, therefore, that I am properly seised of the Complaint;

RECALLING that an administrative decision by the Registrar may be quashed if the Registrar:

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test).⁹

NOTING Rules 44 and 45 of the Rules, and Articles 14 and 15 of the Directive, which also apply to persons detained under Rule 90 *bis* of the Rules;¹⁰

⁴ See *supra* n. 3. See also generally, Karadžić Submission. Karadžić states that he "has an interest in having Mr. Martić represented by counsel who can offer him well-informed advice", but does not explain that interest. Karadžić Submission, para. 6.

⁵ See Directive No. 1/94, IT/73/REV. 11, 11 July 2006.

⁶ See Registrar's Submission, para. 5.

⁷ Cf. Rule 45 *bis* of the Rules ("Rules 44 and 45 shall apply to any person detained under the authority of the Tribunal").

⁸ Rule 19(A) of the Rules. See also, e.g., Decision on the Request for Review of Registrar Decision and for Summary Reversal, 7 May 2012, paras 4-5; Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012 ("Review Decision on Defence Funding"), para. 6, and authorities cited therein.

⁹ Review Decision on Defence Funding, para. 6. See also *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, paras 13-14.

CONSIDERING that Martić is entitled to the assistance of counsel in connection with his testimony in the case of *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, pursuant to Article 5(iii) of the Directive and Rule 90 *bis* of the Rules;

NOTING Martić's assertion that he intends to initiate review proceedings pursuant to Rule 119 of the Rules against the final judgement in his case, and his further submission that it is "indispensable" that Milovančević represent him during his testimony in the *Karadžić* case, in order to prevent "put[ting] the review of [his] proceedings at risk";¹¹

CONSIDERING, however, that individuals lacking the means to remunerate counsel "have the right to have counsel assigned to [them] by the Registrar from the list drawn up in accordance with Rule 45(B)" of the Rules, and do not have an absolute right to a counsel of their own choosing;¹²

CONSIDERING that only individuals admitted to the Rule 45 List may be assigned as Tribunal remunerated counsel to individuals before the Tribunal;¹³

CONSIDERING that Martić does not submit either that Milovančević is currently admitted to the Rule 45 List, or that he has submitted an application for admission to the Rule 45 List;¹⁴

CONSIDERING the Registrar's assertion that Milovančević is neither admitted to the Rule 45 List, nor has applied for admission to the Rule 45 List;¹⁵

CONSIDERING that, in these circumstances, Martić has failed to demonstrate that the Registrar's Decision to deny appointing specific counsel who did not meet the requirements of this appointment violated legal requirements or rules of natural justice, erred in the material taken into account, or was unreasonable;

¹⁰ Cf. Rule 45 *bis* of the Rules ("Rules 44 and 45 shall apply to any person detained under the authority of the Tribunal").

¹¹ Complaint, p. 2.

¹² *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, Judgement, 9 May 2007, para. 14. See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar Relating to the Withdrawal of Co-Counsel, 23 November 2006, para. 10, and authorities cited therein.

¹³ See Rule 45(A) and (B) of the Rules; Directive, Article 14(A) ("Any person may be assigned as counsel [...] if the Registrar is satisfied that he is admitted to the [Rule 45 List]").

¹⁴ See generally Complaint.

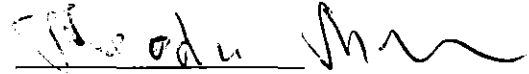
¹⁵ See Registrar's Submission, para. 11.

FOR THE FOREGOING REASONS,

REJECT the Karadžić Submission as not properly before me; and **DENY** the Complaint.

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

Done this 8th day of April 2013,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]