



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: IT-02-60-AR73.4

Date: 7 November 2003

Original: English

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**IN THE APPEALS CHAMBER**

**Before:** Judge Mohamed Shahabuddeen, Presiding  
Judge Fausto Pocar  
Judge David Hunt  
Judge Mehmet Güney  
Judge Inés Weinberg de Roca

**Registrar:** Mr Hans Holthuis

**Decision of:** 7 November 2003

**PROSECUTOR**

v

**Vidoje BLAGOJEVIĆ**

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**PUBLIC AND REDACTED REASONS FOR DECISION ON APPEAL BY VIDOJE  
BLAGOJEVIĆ TO REPLACE HIS DEFENCE TEAM**

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**Counsel for the Prosecutor:**  
Mr Peter McCloskey

**Counsel for the Appellants:**  
Mr Michael Karnavas  
Ms Suzana Tomanovic

1. This is an appeal by Vidoje Blagojević (“Appellant”) from a decision of the Trial Chamber,<sup>1</sup> by which it refused his motion to direct the Registrar<sup>2</sup> to withdraw his current counsel and appoint counsel after taking into consideration his views as to who should represent him.<sup>3</sup> Following an application by the Appellant, the Trial Chamber certified the matter for appeal to the Appeals Chamber pursuant to Rule 73(B) of the Rules of Evidence and Procedure (“Rules”).<sup>4</sup> In certifying the appeal, the Trial Chamber restricted the filings on appeal to those of the Appellant (represented by independent counsel) and his assigned Counsel, leaving it to the Appeals Chamber to determine whether it was necessary to hear any other parties.<sup>5</sup> The Prosecution advised that it did not consider that it should make submissions on the appeal as the issues were between the Appellant and his assigned Counsel. The Counsel assigned to the Appellant also advised the Appeals Chamber that it would not file a Response to the Appellant’s Appeal Brief, stating that it took no position on the appeal. The Appeals Chambers dismissed the appeal on 15 September 2003 and it now gives its reasons for that Decision.<sup>6</sup>

### **Background**

2. The procedural history of this matter is adequately laid out in the Trial Chamber’s Impugned Decision and need not be repeated in detail here. For present purposes it is sufficient to summarise as follows: during a Status Conference before the Trial Chamber originally seized of these proceedings, the Appellant sought the assistance of the Trial Chamber in resolving the issue of his opposition to the appointment by the Registrar of Ms Suzana Tomanović as Co-counsel in his case. The Trial Chamber held an *ex parte* and closed session hearing, and after hearing from all the parties found that no good cause had been shown to warrant interference with the Registrar’s decision.<sup>7</sup> No appeal was lodged by the Appellant against the Trial Chamber’s Decision.

3. Shortly thereafter the Appellant again raised the issue of the assignment of counsel to his case. The Appellant told the Trial Chamber that he was dissatisfied with the way the assignment of Co-counsel had been resolved and that he no longer trusted his Counsel, and that if his Co-counsel was

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<sup>1</sup> Decision on Independent Counsel for Vidoje Blagojević’s Motion to Instruct the Registrar to Appoint New Lead and Co-counsel, 3 July 2003 (“Impugned Decision”).

<sup>2</sup> Decision, 8 Apr 2003 (“Registrar’s Decision”).

<sup>3</sup> Appeal Brief After Certification by the Trial Chamber Ex Rule 73 to Lodge an Appeal Against its Decision of 3 July 2003, in Which it was Denied the Motion to Instruct the Registrar to Appoint new Lead and Co-counsel for Vidoje Blagojević, 1 Aug 2003 (“Appeal Brief”).

<sup>4</sup> Decision on Vidoje Blagojević’s Request for Certification, 25 July 2003.

<sup>5</sup> *Ibid*, pg 3.

<sup>6</sup> Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 15 September 2003 (“Decision”).

not replaced he would request a replacement of his entire defence team.<sup>8</sup> After hearing submissions from the parties in an *ex parte* and closed session hearing, the Trial Chamber forwarded the transcript of the hearing to the Registrar to consider whether Co-counsel, or the entire defence team appointed to the Appellant, should be withdrawn. The Registrar issued a decision refusing to withdraw the assignment of Co-counsel or the replacement of the Appellant's defence team.<sup>9</sup> No appeal against the Registrar's Decision was lodged by the Accused.<sup>10</sup>

4. Prior to the issuing of the Registrar's Decision, the proceedings were transferred from Trial Chamber II to the current Trial Chamber.<sup>11</sup> At the Pre-Trial Conference (before the current Trial Chamber), the Appellant again raised the issue of the assignment of counsel. He stated that the defence team which purported to be representing him at the Pre-Trial Conference had been dismissed by him and that he was unrepresented.<sup>12</sup> Following various submissions made by the Appellant regarding his Counsel, the Trial Chamber issued an order to the Registrar directing that independent legal counsel be appointed to the Appellant ("Independent Counsel") to discuss the issue with him, and to assist in filing any relevant motion before the Trial Chamber.<sup>13</sup>

5. Following the appointment of Independent Counsel,<sup>14</sup> the Appellant filed a motion requesting the Trial Chamber "to instruct the Registrar to withdraw the assignment of current counsel and to appoint new lead and co-counsel with due consideration and respect for Mr Blagojević's ideas thereto" ("Motion"). The Trial Chamber held an *ex parte* and closed session hearing in which it received submissions from Independent Counsel and representatives of the Registrar. Following that hearing, the Chamber received written submissions from Independent Counsel, the Registrar, Counsel and the Prosecution. The Trial Chamber's determination of the Appellant's Motion is the Impugned Decision now before the Appeals Chamber.

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<sup>7</sup> Decision on Oral Motion to Replace Co-counsel, 9 Dec 2002 ("Trial Chamber's Decision").

<sup>8</sup> Status Conference, 27 Mar 2003, T 160-172.

<sup>9</sup> Decision, 8 Apr 2003 ("Registrar's Decision").

<sup>10</sup> In the motion filed before the Trial Chamber by Independent Counsel (Independent Counsel for Vidoje Blagojević's Motion to Instruct Registrar to Appoint new Lead and Co-counsel, 5 June 2003), it is submitted that the Appellant did not file an application for review to the President in accordance with the correct procedure because "nobody had even told him how to do that. Not being a lawyer, totally ignorant on issues of ICTY-procedure, and not feeling inclined anymore to confide in either of the counsel still assigned to him, but whom he had de facto 'fired', he felt caught in a dead end street", par 14.

<sup>11</sup> Order Assigning a Judge to a Case Before a Trial Chamber, 1 Apr 2003.

<sup>12</sup> Pre-Trial Conference, 5 May 2003, T 204-205.

<sup>13</sup> *Ibid.*, T 261; Order on the Appointment of Independent Legal Counsel, 9 May 2003, p 8.

<sup>14</sup> Decision by the Registrar, 23 May 2003.

## Admissibility

6. Before turning to the Impugned Decision it is necessary to address briefly the basis upon which the Trial Chamber determined that it had the power to consider the request of the Appellant. In considering the Motion, the Trial Chamber interpreted the request of the Appellant as being “to both review the Registrar’s Decision, and, to some extent, assume certain powers of the Registrar in deciding upon the assignment of new counsel”.<sup>15</sup> The assignment of Counsel to an indigent accused is a responsibility conferred upon the Registrar,<sup>16</sup> as is a request for a withdrawal of assigned counsel. The determination of such a request is governed by Article 19 of the Directive. That Article provides as follows:

### Article 19

(A) In the interests of justice, the Registrar may:

- (i) at the request of the accused, or his counsel, withdraw the assignment of counsel;
- (ii) at the request of Counsel withdraw the assignment of Co-counsel.

...

(F) Where a request for withdrawal made pursuant to paragraph A, has been denied the person making the request may seek the President’s review of the decision of the Registrar within two weeks from the notification of the decision to him.

Under Article 19, where a request for withdrawal of counsel or co-counsel is refused by the Registrar, a review of that refusal may be sought from the President within two weeks of the notification of that refusal. The Directive does not provide for review of a refusal to be made by a Trial Chamber. The Appellant in this case was aware of the provisions of the Directive but chose not to pursue that procedure.<sup>17</sup> Instead, the Appellant brought his request that counsel be replaced before the Trial Chamber. The Trial Chamber found that it had the power to consider the matter based on its inherent power and duty to guarantee a fair trial and the proper administration of justice in accordance with Articles 20 and 21 of the Statute. It considered that the Appellant’s request did not involve merely a consideration of “the appointment of counsel from an administrative perspective, but extends to the substantive nature of the representation by Counsel, and the proper fulfilment of obligations of legal representation towards the Accused by Counsel”.<sup>18</sup> Thus the request impacted upon the substantive rights of the Appellant to a fair and expeditious trial and the issue of the assignment or replacement of counsel was subject to judicial scrutiny.<sup>19</sup> In taking this approach, the Trial Chamber stated that it was aware that its examination of the issue was “complementary to the powers of the Registrar and not an appropriation of the Registrar’s

<sup>15</sup> Impugned Decision, par 23.

<sup>16</sup> Rule 45 of the Rules, Articles 5-12 of the Directive on Assignment of Defence Counsel, IT/73, Rev 9 (“Directive”).

<sup>17</sup> Impugned Decision, ¶n 57.

<sup>18</sup> *Ibid*, par 27.

responsibilities”.<sup>20</sup> In hearing the submissions of the parties and in rendering its decision upon the request, however, the Trial Chamber reviewed the Registrar’s decision and also considered for itself whether in all the circumstances the Registrar’s refusal to withdraw the counsel assigned to the Appellant was commensurate with the rights of the Appellant to a fair trial.<sup>21</sup>

7. The decision of the Trial Chamber (to consider the request of the Appellant itself rather than direct the Appellant to appeal the Registrar’s Decision to the President) was a procedure it adopted pursuant to its inherent power to ensure the fair and expeditious trial of the accused.<sup>22</sup> The Appeals Chamber accepts that there is authority upon which the Trial Chamber could conclude that it had the power to act in this way.<sup>23</sup> However, it considers that the earlier authority which has recognised the power of a Trial Chamber to review a decision of the Registrar where that power is specifically conferred on the President is wrong and that it is in the interests of justice for the Appeals Chamber to depart from it. The only inherent power that a Trial Chamber has is to ensure that the trial of an accused is fair; it cannot appropriate for itself a power which is conferred elsewhere. As such, the only option open to a Trial Chamber, where the Registrar has refused the assignment of new Counsel, and an accused appeals to it, is to stay the trial until the President has reviewed the decision of the Registrar. The Appeals Chamber considers that it is only by adopting this approach that the Trial Chamber properly respects the power specifically conferred upon the Registrar and the President by the Directive to determine whether an accused’s request for the withdrawal of Counsel should be granted in the interests of justice.<sup>24</sup> As the Appeals Chamber held in case of *Delalić*,<sup>25</sup> “it is not ordinarily appropriate for a Chamber to consider motions on matters that are within the primary competence of the Registrar”.<sup>26</sup> Moreover, by following the procedure

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<sup>19</sup> *Ibid*, par 27.

<sup>20</sup> *Ibid*.

<sup>21</sup> *Ibid*, pars 23-27.

<sup>22</sup> *Prosecutor v Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case IT-01-47-PT, Decision on Prosecution’s Motion for Review of the Decision of the Registrar to Assign Mr Rodney Dixon as Co-counsel to the Accused Kubura, 26 Mar 2002; *Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Case IT-96-21-A, Order on Esad Landžo’s Motion for Expedited Consideration, 15 Sept 1999; *Jean Bosco Barayagwiza v The Prosecutor*, Case ICTR-97-19-AR72, Decision (Request for Withdrawal of Defence Counsel), 31 Jan 2000.

<sup>23</sup> *Prosecutor v Enver Hadžihasanović, Mehmed Alagić and Amir Kubura*, Case IT-01-47-PT, Decision on Prosecution’s Motion for Review of the Decision of the Registrar to Assign Mr Rodney Dixon as Co-counsel to the Accused Kubura, 26 Mar 2002; *Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Case IT-96-21-A, Order on Esad Landžo’s Motion for Expedited Consideration, 15 Sept 1999; *Jean Bosco Barayagwiza v The Prosecutor*, Case ICTR-97-19-AR72, Decision (Request for Withdrawal of Defence Counsel), 31 Jan 2000; *Prosecutor v Knezević et al*, Case IT-95-4-PT, Decision on Accused’s Request for Review of Registrar’s Decision as to Assignment of Counsel, 6 Sept 2002; *Prosecutor v Kvočka*, Case It-98-30/1-A, Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Žigić, 7 Feb 2003.

<sup>24</sup> Further, by determining that it had the power to examine the matter for itself, in conjunction with a review of the decision of the Registrar, and by certifying this Appeal, the Trial Chamber has granted the Appellant an additional

<sup>25</sup> *Prosecutor v Delalić et al*, IT-96-21-A, “Order on Esad Landžo’ Motion for Expedited Consideration, 15 Sept 1999.

<sup>26</sup> *Ibid*, p 3.

established by the Practice Direction, a Trial Chamber may also avoid extended delays, such as have occurred in this case. Such delays can only be to the detriment of all parties.

8. Without prejudice to the restriction indicated in paragraph 7 and as the Trial Chamber has considered the matter on the basis that it was competent to review the Registrar's decision the Appeals Chamber in the circumstances of this case will consider all the grounds of appeal put forward by the Appellant.

### **Preliminary Issues**

9. Before turning to consider the grounds of appeal advanced by the Appellant, it is necessary to deal with two preliminary issues. The first issue concerns matters raised by the Appellant in his Appellant's Brief which are matters in reply to the Response of Counsel and Co-counsel filed before the Trial Chamber.<sup>27</sup> Before the Trial Chamber, Independent Counsel for the Appellant had sought an extension of time in which to reply to the Response of Counsel and Co-counsel.<sup>28</sup> This was refused by the Trial Chamber.<sup>29</sup> In the Appeal Brief, the Appellant takes issue with a number of specific responses made by Counsel to his Motion and presents arguments that attempt to refute them. Most of the issues to which the Appellant replies in the Appeal Brief do relate to matters which were already before the Trial Chamber, although not originally presented in the light in which the Appellant now seeks to present them. [REDACTED]

[REDACTED]

10. But other matters raised by the Appellant in his Appeal Brief in reply to the Response filed by Counsel and Co-Counsel were not raised at all before the Trial Chamber - in particular, the allegation by the Appellant of alleged breaches by Counsel of attorney-client privilege by the filing,

<sup>27</sup> Appeal Brief, pars 4-32; Counsel's and Co-Counsel's Response to the Motion by Independent Counsel, 16 June 2003 ("Response").

<sup>28</sup> Motion by Independent Counsel in Relation to Response to Counsel's and Co-counsel's and the Registrars [sic] Response to Independent Counsel's Motion to Instruct the Registrar to Assign New Defence Counsel, 27 June 2003 ("Motion for Extension of Time").

<sup>29</sup> Decision on Motion by Independent Counsel in Relation to Response to Counsel's and Co-counsel's and the Registrar's Response to Independent's Counsel's Motion to Instruct the Registrar to Assign New Defence Counsel, 1 July 2003.

<sup>30</sup> Status Conference, 27 Nov 2002, T 117.

<sup>31</sup> Motion for Extension of Time, par 5.

in support of Counsel's responses, of communications between Counsel and the Appellant, and of conversations between Counsel and the Registry concerning things said to him by the Appellant. The appeal before the Appeals Chamber is not a hearing *de novo* and the Appellant is not entitled to raise new issues not put before the Trial Chamber in support of his appeal. However, although the Appeals Chamber is not obliged to consider any allegation raised for the first time on appeal, for completeness and to ensure finality in the rather special circumstances of this case, it has resolved in this instance to do so. In adopting this approach, the Appeals Chamber emphasises that it does so in order to avoid the Appellant seeking a reconsideration of any of the issues which should have properly been raised in reply before the Trial Chamber, and in order to conclude these proceedings.

11. The second issue concerns the admissibility on appeal of three exhibits which the Appellant has filed with his Appeal Brief. [REDACTED]

[REDACTED] Exhibit Two is a letter from the brother of the accused, Velizar Blagojević, addressed to Counsel Michael Karnavas making various complaints about the conduct of the Appellant's defence. Exhibit Three is a document prepared by Velizar Blagojević outlining his experience of working with Suzana Tomanović and his opinion that she was only qualified to work as an interpreter. None of the attached exhibits was before the Trial Chamber. However, again for the purposes of ensuring finality, the Appeals Chamber has read the exhibits for itself in order to determine whether any prejudice will be suffered by the Appellant if they are not considered in this appeal. The Appeals Chamber is satisfied that there is no such prejudice.

#### **Grounds of Appeal**

12. The Appellant claims that the Trial Chamber acted unreasonably in holding that the problems existing between the Appellant and his Counsel could be solved by the appointment of a temporary legal representative to the Appellant.<sup>32</sup> The Appellant identifies the core issue as being the fact that he has no confidence at all in his current defence team. He says that there is a total breakdown in communication between his defence team and himself, and that the situation has further deteriorated as a result of the Response filed by Counsel to his Motion before the Trial Chamber.<sup>33</sup> In essence, the Appellant says that there are three issues which lead him to the firm

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<sup>32</sup> Appeal Brief, par 2.

<sup>33</sup> *Ibid*, par 4.

view “that he will never be in the position to cooperate with his current defence team, in such a way that he can enjoy the fruits of a fair trial in which he has been vigorously defended on the basis of a common understanding of the defence strategy by himself and Counsel”.<sup>34</sup> The Appellant identifies two of the issues as he presented them to the Trial Chamber as “the Tomanović issue” and “the Defence issue”.<sup>35</sup> He identifies a third issue, which he claims arises from the Response filed by Counsel before the Trial Chamber. [REDACTED]

[REDACTED] These issues form the central basis of the Appellant’s contention that the Trial Chamber erred in refusing his motion to direct the Registrar to replace his Co-counsel and Counsel because he no longer has trust or confidence in them.

#### (a) The Tomanović issue

13. The first issue, identified by the Appellant as “the Tomanović issue”, relates to the finding of the Trial Chamber that there is no foundation to the Appellant’s complaints about the assignment of Ms Tomanović as his Co-Counsel, and that no error was made by the Registrar in refusing the Appellant’s request that she be withdrawn. In relation to this issue, on appeal, the Appellant essentially reiterates the arguments he made before the Trial Chamber.<sup>37</sup>

14. The Appellant alleges that, in upholding the decision of the Registrar to appoint Ms Tomanović as Co-counsel, the Trial Chamber erred in finding that the Appellant had been informed of the likelihood of Ms Tomanović being appointed as Co-counsel;<sup>38</sup> erred in failing to take sufficient notice of the role intended to be performed by Co-counsel and the necessity for the Appellant to have the same confidence in Co-counsel and Counsel;<sup>39</sup> erred in confirming the Registrar’s decision to appoint Ms Tomanović as Co-counsel as she has no experience as a criminal defence lawyer, and he takes issue with Article 14 of the Directive in this regard;<sup>40</sup> erred in accepting the Registrar’s decision that Ms Tomanović was suitable to be appointed as Co-counsel as she complied with relevant professional and ethical standards;<sup>41</sup> erred in finding that Counsel

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<sup>34</sup> *Ibid.*, par 5.

<sup>35</sup> *Ibid.*, par 6.

<sup>36</sup> *Ibid.*, par 6.

<sup>37</sup> *Ibid.*, par 3.

<sup>38</sup> *Ibid.*, pars 36-37, 39-41, 46-47, 66-68, 101-102.

<sup>39</sup> *Ibid.*, pars 90-96.

<sup>40</sup> *Ibid.*, pars 66-69.

<sup>41</sup> *Ibid.*, par 78.



had considered the third person recommended by the Appellant as Co-counsel,<sup>42</sup> and erred in finding that the appointment of Ms Tomanović was made in the best interests of the Appellant.<sup>43</sup>

15. The nomination of Co-counsel to the defence of an Appellant is, under Article 16 of the Directive, a decision to be taken by Counsel. Counsel in this case requested that the Registrar appoint Ms Tomanović to the Appellant. It is not disputed that Counsel sought that appointment against the express wishes of the Appellant, and it is also not disputed that, in making that appointment as requested by Counsel, the Registrar was aware that the Appellant was seeking the appointment of a third person as his Co-counsel.

### Analysis

16. The Appeals Chamber is not satisfied that the Appellant has established that the Trial Chamber erred in confirming the Registrar's decision to appoint Ms Tomanović as Co-counsel to the Appellant. The Trial Chamber clearly took into account the opposition of the Appellant to the appointment, including his claims to have been surprised by the appointment, his desire to have a third person appointed and his notification to the Registry that he wished this third person to be appointed as his Co-counsel.<sup>44</sup> It further considered the various objections made by the Appellant to the appointment of Ms Tomanović as his Co-counsel to the Registry/OLAD,<sup>45</sup> and at various motion hearings. This included the consideration of claims made by him that Ms Tomanović was only seen by him as an interpreter and that if she were not replaced he would no longer have faith in his Counsel.<sup>46</sup> It further considered the impact the Appellant claimed the failure of Counsel to consult with him on the appointment of Co-counsel had on his relationship with Counsel, in particular how the appointment undermined the Appellant's trust in his Counsel.<sup>47</sup>

17. The Appeals Chamber is satisfied that, on the material placed before it by the Appellant, Counsel and the Registrar, it was reasonably open to the Trial Chamber to find that the Appellant had been aware from the outset of the likelihood of Ms Tomanović being appointed as Co-counsel, and that prior to the appointment being made the Appellant had not expressed any dissatisfaction with the abilities of Ms Tomanović who had, until that time, carried out substantial work on the

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<sup>42</sup> *Ibid*, par 104.

<sup>43</sup> *Ibid*, pars 106-108.

<sup>44</sup> Impugned Decision, pars 31-34.

<sup>45</sup> Office of Legal Aid and Defence.

<sup>46</sup> *Ibid*, pars 36-37.

<sup>47</sup> *Ibid*, pars 38-42.

Appellant's defence, often in the absence of Counsel.<sup>48</sup> The Appeals Chamber rejects the argument of the Appellant that the Trial Chamber failed to consider properly the role to be played by Co-Counsel and gave insufficient weight to his views of her abilities and the necessity for the Appellant to have trust and confidence in those abilities.<sup>49</sup> As already stated, it was reasonably open to the Trial Chamber to find that there was no basis for the Appellant to be dissatisfied with the quality of legal representation being afforded to him by Co-Counsel, and no basis for the lack of trust in those abilities which he claims.

18. The Appeals Chamber is satisfied that it was reasonably open to the Trial Chamber to find that there had been no error on the part of the Registrar in finding that Ms Tomanović satisfied the requirements of Article 14 of the Directive and was qualified to be appointed as Co-counsel to the Appellant following the request of Counsel pursuant to Article 16 of the Directive.<sup>50</sup> The Appeals Chamber rejects as unfounded the assertion of the Appellant that to be suitably qualified as a defence counsel the Directive should impose the condition that Counsel has prior experience as a defence lawyer.<sup>51</sup> A lawyer with "reasonable experience in criminal and or/international law"<sup>52</sup> is perfectly able to work either as defence counsel or as a prosecutor, and the Appellant suffers no disadvantage by virtue of the fact that his Co-Counsel's experience is predominately as a criminal prosecutor.

19. The Appeals Chamber also rejects the assertion of the Appellant that the Registrar must be a member of the defence bar in order to be qualified to assess whether counsel complies with relevant ethical and professional standards. Rules 44 and 45 of the Rules, and Article 14 of the Directive, clearly set down the requirements of which the Registrar must satisfy himself before placing any counsel on the list of available counsel pursuant to Rule 45(B). The Registrar is perfectly able to satisfy himself as to whether a candidate seeking inclusion on the list of available counsel meets those standards without himself holding membership of a defence bar.

20. The Appeals Chamber is satisfied that there was sufficient evidence before the Trial Chamber for it reasonably to conclude that Counsel had considered the suitability of the third person identified by the Appellant to be appointed as Co-counsel, that he reasonably determined

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<sup>48</sup> *Ibid*, pars 43-50, 84. See also ft 124.

<sup>49</sup> Appeal Brief, pars 66-68.

<sup>50</sup> Impugned Decision, pars 83-84, 92.

<sup>51</sup> Appeal Brief, par 69.

<sup>52</sup> Article 14 of the Directive

that that person was not qualified, and that Counsel's decision to appoint Ms Tomanović was a decision made by Counsel in the best interests of the Appellant.<sup>53</sup>

21. Having determined that the objections of the Appellant to the Trial Chamber's confirmation of the appointment of Ms Tomanović as Co-counsel are unfounded, the Appeals Chamber notes that a number of the alleged errors identified by the Appellant would not, even if established, be of such a nature as to warrant interference with the decision of the Trial Chamber. As already stated, the appointment of Co-counsel is a decision to be made by Counsel pursuant to Article 16 of the Directive. In this respect, provided the Registrar is satisfied that the nominated person meets the requirements of Article 14 of the Directive, the propriety of Counsel seeking the appointment of a particular person does not turn upon the awareness of an accused of the likelihood of such an appointment or upon the agreement of an accused to that appointment. The duty of Counsel in this regard is to appoint as Co-counsel a person who is qualified and able to assist Counsel properly in the defence of the Appellant's case. From the material which was before the Trial Chamber, it is clear that Ms Tomanović had, in her capacity as legal assistant to Counsel, shown herself to be more than adequate to this task, and that in seeking her appointment Counsel was acting in the best interests of the Appellant.

22. Further, while the selection of Co-counsel is a matter which falls to lead Counsel under the Article 16 of the Directive, the selection of lead Counsel is a matter that falls to the Registrar under Article 14 of the Directive. The Registrar may take account of an accused's preferences, as he did in the appointment of lead Counsel in this case, but it is within the Registrar's discretion to override that preference if it considers that it is in the interests of justice to do so.<sup>54</sup> The Registrar, and both Trial Chambers who have already considered the Appellant's request for the withdrawal of his Co-counsel, have made these provisions abundantly clear to the Appellant. Even so, the Appellant appears to believe that, if he continues to hold the erroneous view that he has a right to choose his lead Counsel and, as a corollary to that right, a right to choose Co-counsel, that assertion will be eventually recognised as warranting the removal of his assigned Counsel. That belief is mistaken.

### **(b) The Defence Issue**

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<sup>53</sup> Impugned Decision, par 84.

<sup>54</sup> It has been consistently held that an indigent accused is not entitled to Counsel of his own choosing *see*, *Kambanda v Prosecutor*, Case ICTR-97-23-A, Appeals Chamber Judgement, 19 Oct, par 33; *Prosecutor Akayesu*, Case ICTR-96-4-4, Appeal Chamber Judgement, 1 June 2001, pars 61-62; *Prosecutor v Kenezević et al*, Case IT-95-4-PT, Decision on Accused's Request for Review of Registrar's Decision as to Assignment of Counsel, 6 Sept 2002, p.3.

23. At the core of the defence issue is the finding of the Trial Chamber that there is no reasonable basis for the Appellant to be dissatisfied with the quality of legal assistance being afforded to him by his appointed Counsel. The grounds of appeal identified by the Appellant as being relevant to this issue are that the Trial Chamber erred in failing to take into account the impact on the Appellant's relationship with Counsel of the inconsistent accounts given by each of them as to the progress of work on the case;<sup>55</sup> erred in failing to take into account the failure of Counsel to consult with the Appellant on defence strategy;<sup>56</sup> erred in finding that Counsel consulted with the Appellant prior to filing motions on his behalf;<sup>57</sup> failed to address the contradiction between the assertion of Counsel that the Appellant was consulted on every aspect of the case, and the Appellant's claim that he was only consulted prior to the filing of certain motions;<sup>58</sup> erred in finding that the Appellant was kept sufficiently informed of the conduct of his case;<sup>59</sup> erred in failing to take into account the failure of Counsel to provide the Appellant with a copy of the material prepared by military experts;<sup>60</sup> failed to attach sufficient weight to the breakdown in communications evidenced by the problems associated with the meeting with experts;<sup>61</sup> erred in finding that Counsel had weekly telephone contacts with the Appellant;<sup>62</sup> gave insufficient weight to the fact that there has been no contact between the Appellant and his defence team since 2 April 2003;<sup>63</sup> and, finally, erred in finding that the efficient management of resources was a relevant consideration to be taken into account by the Registrar.<sup>64</sup>

### Analysis

24. In setting out the grounds of appeal relied on by the Appellant in relation to the "defence issue", it is apparent that many of his alleged complaints cannot properly be considered to be grounds of appeal at all. In many instances the Appellant merely identifies where he disagrees with the findings of the Trial Chamber without properly identifying, or without identifying at all, the basis of the alleged error he claims occurred. It is not sufficient for an Appellant merely to assert, by reference to his "subjective views", that a finding of a Trial Chamber is erroneous without

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<sup>55</sup> Appeal Brief, pars 49-51.

<sup>56</sup> *Ibid.*, par 48.

<sup>57</sup> *Ibid.*, pars 57-58.

<sup>58</sup> *Ibid.*, par 60.

<sup>59</sup> *Ibid.*, pars 61-64, 95, 98-100, 112-118, 122, 125-126.

<sup>60</sup> *Ibid.*, par 53.

<sup>61</sup> *Ibid.*, pars 54-55.

<sup>62</sup> *Ibid.*, par 56.

<sup>63</sup> *Ibid.*, par 59.

properly identifying a basis for his claim that that finding should be reversed on appeal.<sup>65</sup> However, to ensure finality of the issue, the Appeals Chamber has, in the circumstances of this case, considered all the objections made by the Appellant, even though it is clear that most of those objections are nothing more than unfounded subjective assertions of the Appellant.

25. The Appeals Chamber is not satisfied that the Appellant has established that the Trial Chamber failed to consider properly the submissions put by him in relation to the quality of legal representative accorded to him by Counsel. The Trial Chamber considered the claims of the Appellant that Counsel had not communicated with him on the preparation of his defence, and had failed to discuss defence strategy with him despite his requests that it do so. It also considered his allegation that Counsel filed motions without his knowledge or consent,<sup>66</sup> and failed to disclose to him an expert report to which he had requested access.<sup>67</sup> The Appeals Chamber is satisfied that the evidence from the case record adduced by Counsel showed that it was reasonably open to the Trial Chamber to find that there had been sufficient communication between the Appellant and Counsel about the preparation of the defence and about the case in general.<sup>68</sup> The Appeals Chamber also rejects the assertion that the Trial Chamber erred in finding that the Appellant was consulted prior to the filing of motions.<sup>69</sup> On the evidence presented to the Trial Chamber, the Appeals Chamber is satisfied that it was reasonably open for the Trial Chamber to conclude that Counsel did consult the Appellant prior to the filing of motions on his behalf.<sup>70</sup> The Appeals Chamber is satisfied that the explanation given by Counsel (that the Appellant was consulted on all motions filed prior to their filing, but was not always presented with a translated version of the motion until after the filing) was an entirely reasonable explanation, and that no error was made by the Trial Chamber in relying upon it.<sup>71</sup>

26. In upholding these findings the Appeals Chamber rejects the assertions of the Appellant that he has a right to be consulted on each and every action taken by Counsel in the defence of his case. The relevant professional obligations of Counsel in this regard are set out in Article 8 (B) of the Code of Professional Conduct.<sup>72</sup> Counsel must “abide by the client’s decisions concerning the objectives of representation”, and “consult with the client about the means by which those

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<sup>64</sup> *Ibid*, pars 79-81.

<sup>65</sup> *Prosecutor v Kupreškić*, Case IT-95-16-A, Appeal Judgment, 23 Oct 2003, par 27.

<sup>66</sup> Impugned Decision, par 38.

<sup>67</sup> *Ibid*, pars 39, 42.

<sup>68</sup> *Ibid*, pars 94-96, 101.

<sup>69</sup> Appeal Brief, pars 57-58; Impugned Decision, par 52.

<sup>70</sup> Impugned Decision, par 94.

<sup>71</sup> *Ibid*, par 94.

<sup>72</sup> IT/125 Rev 1.

objectives are to be pursued, but is not bound by the client's decision". There is no requirement that Counsel take no action at all pursuant to the agreed objective, and by the means agreed, without first informing the Appellant of the particular action to be taken. In this regard, the Appeals Chamber notes that the one example given by the Appellant of Counsel acting without his authority (in the filing of the motion seeking an extension of time for the filing of the pre-trial brief), was an action undertaken by Counsel because the Appellant created a situation (by his refusal to meet with Counsel) where his comments on the prosecution's pre-trial brief would not be received by Counsel prior to the expiration of the time limit for filing. The action taken by Counsel, in the seeking of an extension of time, was an action taken to give the Appellant sufficient time to express his views on the Pre-Trial Brief.<sup>73</sup> He acted with complete propriety in doing so.

27. The Appeals Chamber rejects the argument of the Appellant that the record showing the many hours Counsel has spent with the Appellant at the Detention Unit "does not disclose anything about what was discussed" or "disclose whether Mr Blagojevic was given any opportunity to really cooperate with and influence Mr Karnavas about how to proceed".<sup>74</sup> The Appellant had made no complaints, prior to his being notified that the Registrar would not consent to a withdrawal of Co-Counsel, about the work of his Counsel, and the reliance by the Trial Chamber upon those records as showing that the parties were working as a team on the Appellant's defence was entirely reasonable. The Appeals Chamber rejects the argument of the Appellant that his "subjective" views about how his trial should proceed may override the professional obligation of Counsel to act in the best interests of the Appellant.<sup>75</sup> Counsel has an obligation to consult with the Appellant but he is not bound by the Appellant's views as to what are the best means to achieve the objects of the Appellant's defence.<sup>76</sup>

28. The Appeals Chamber rejects the argument of the Appellant that the inconsistencies between the accounts of the Appellant and Counsel in relation to the quality of legal representation were not considered by the Trial Chamber in its Decision.<sup>77</sup> The Trial Chamber considered the claims of both parties and found that the Appellant had not established that which he asserted. Again, it is noteworthy that the Appellant only complained about Counsel's legal representation after his request for the withdrawal of Co-Counsel had failed, and that the incidents he purported to identify in support of his complaints were few, of recent origin, and not of sufficient seriousness to raise questions about the professionalism of his Counsel.

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<sup>73</sup> Response, par 45.

<sup>74</sup> Appeal Brief, pars 14, 50.

<sup>75</sup> *Ibid.*, par 15.

<sup>76</sup> Article 8 of the Code of Professional Conduct for Defence Counsel.

29. The Appeals Chamber rejects the assertion of the Appellant that the Trial Chamber failed to give adequate weight to the breakdown of communications in relation to the meeting of experts.<sup>78</sup> The Trial Chamber found, as was reasonably open to it on the evidence presented to it, that the meeting with experts did occur and that the Appellant had refused to meet with the experts without the presence of Counsel.<sup>79</sup> In the Appeal Brief, the Appellant explains why he refused to meet with the experts without the presence of Counsel.<sup>80</sup> The Appellant did not present this evidence to the Trial Chamber, despite being given opportunities to do so. In any event, the Appeals Chamber is not satisfied that the explanation of the Appellant adds anything substantive to the matters put before the Trial Chamber which would have led it to form a different view about the relationship between the Appellant and his Counsel, and the source of the problems with that relationship.

30. The Appeals Chamber rejects the assertion of the Appellant that the Trial Chamber erred in finding that the Appellant had weekly contact with Co-counsel. In the Impugned Decision, the Trial Chamber records this fact as a submission made by Counsel,<sup>81</sup> but makes no specific finding in relation to it such as would have impacted upon its overall finding that communication between the Appellant and Counsel was adequate.

31. The Appeals Chamber rejects the assertion of the Appellant that the Trial Chamber gave insufficient weight to the allegation of the Appellant that he had had no contact with his defence team since 2 April 2003.<sup>82</sup> The Trial Chamber considered the circumstances surrounding the alleged breakdown in communication and found that the breakdown was a result of the Appellant's refusal to communicate with Counsel, and that Counsel was still maintaining his professional obligations to the Appellant.<sup>83</sup> Indeed, the Appellant does not challenge this finding. The Appeals Chamber agrees with the Trial Chamber's finding that the breakdown in communication was the result of the actions of the Appellant, and that this action was undertaken by the Appellant "solely to use as a ground to have counsel replaced." The Appeals Chamber further agrees with the Trial Chamber that such an action as a form of protest is impermissible.<sup>84</sup> The Appeals Chamber is satisfied that the Trial Chamber gave sufficient consideration to this action by the Appellant and its impact upon the relationship between the parties, by providing on a temporary basis an additional

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<sup>77</sup> *Ibid.*, pars 50-64.

<sup>78</sup> *Ibid.*, pars 54-55.

<sup>79</sup> Impugned Decision, par 51.

<sup>80</sup> Appeal Brief, par 55.

<sup>81</sup> Impugned Decision, par 52.

<sup>82</sup> Appeal Brief, par 59.

<sup>83</sup> Impugned Decision, par 108.

<sup>84</sup> *Ibid.*, par 110.

resource to the Appellant in the form of a “legal representative” to assist the Appellant in re-establishing a normal working relationship with his appointed Counsel and to ensure that his interests were wholly protected.<sup>85</sup>

32. The Appeals Chamber rejects the argument of the Appellant that the Trial Chamber erred in finding that the efficient management of resources was a relevant consideration to be taken into account by the Registrar.<sup>86</sup> The Registrar submitted to the Trial Chamber that this factor was taken into account in the assignment of Ms Tomanović as Co-counsel in the case, and that the conservation of resources was a factor relevant to a refusal to withdraw counsel once proceedings had commenced.<sup>87</sup> These submissions were noted by the Trial Chamber in the Impugned Decision in the context in which they were presented, that is, in circumstances where no misconduct or manifest professional negligence on the part of Counsel is established, factors such as the efficient management of resources are relevant to the decision not to permit a withdrawal of Counsel.<sup>88</sup> The Appellant seems to accept that this is so by his argument that such a factor cannot deny an accused a new defence team where there is “a lack of trust and a breach in communication, and a violation of the principle of client-attorney confidentiality”.<sup>89</sup> As none of these factors has been established by the Appellant, the Appeals Chamber is not satisfied that any error was made by the Trial Chamber in relation to the Registrar’s reference to the efficient management of resources.

33. In rejecting the grounds of appeal identified by the Appellant under this head, the Appeals Chamber wishes to emphasise again that the Appellant cannot rely upon a persistent adherence to unfounded “subjective views” to secure the granting to him of that to which he has no reasonable claim, and therefore no right to demand.

### (c) Breach of Trust

34. The final ground of appeal raised by the Appellant relates to the finding of the Trial Chamber that there is no reasonable basis for the Appellant’s assertion that it is impossible for him to continue to work confidently with his assigned Counsel. On appeal, the Appellant alleges that the Trial Chamber [REDACTED] failed to take into account

<sup>85</sup> *Ibid.*, par 114.

<sup>86</sup> Appeal Brief, pars 79-81.

<sup>87</sup> Registrar’s Motion, pars 67, 81.

<sup>88</sup> *Ibid.*, par 92.

<sup>89</sup> Appeal Brief, par 66.

<sup>90</sup> *Ibid.*, pars 38, 77, 131, 132.



other breaches of client-attorney privilege by Counsel in his Response to the motion before the Trial Chamber in relation to the disclosure of alleged statements made by the Appellant with respect to Co-counsel, and in relation to information disclosed by Counsel to the Registrar;<sup>91</sup> erred in allowing Counsel to file with his Response to the motion before the Trial Chamber communications that were the subject of client-attorney privilege;<sup>92</sup> erred in finding that trust and communication between the Appellant and Counsel could be restored;<sup>93</sup> erred in applying an objective test to the Appellant's claims that there was no trust between the parties;<sup>94</sup> erred in accepting the position taken by the Registrar that "any lack of confidence or trust that [the Appellant] may have had in his Counsel can never be regarded as more important than the harm done to his fair trial [...]";<sup>95</sup> and, finally, erred in determining that an interlocutor could heal the breach of trust between the parties.<sup>96</sup>

35. [REDACTED]

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<sup>91</sup> *Ibid.*, pars 43-45, 73.

<sup>92</sup> *Ibid.*, par 52.

<sup>93</sup> *Ibid.*, par 65.

<sup>94</sup> *Ibid.*, par 123.

<sup>95</sup> *Ibid.*, par 83.

<sup>96</sup> *Ibid.*, par 84.

<sup>97</sup> *Ibid.*, par 7.

<sup>98</sup> *Ibid.*, par 8.

<sup>99</sup> *Ibid.*, par 9.

<sup>100</sup> *Ibid.*, par 38.

<sup>101</sup> *Ibid.*, par 130; Impugned Decision, par 131.

36. [REDACTED]

37. The Appellant claims that the Trial Chamber also erred by failing to consider the allegation made by Counsel in his Response that the Appellant had said that he would be “tasking the new Co-counsel” himself. He says that this illustrates again that Counsel is willing to base his Response on privileged communications which he had with the Appellant.<sup>103</sup> The Appellant says that, in failing to discuss this issue, the Trial Chamber has failed to address a vital element in the lack of trust which the Appellant has in his Counsel. He says that the failure of the Trial Chamber to discuss this breach of confidentiality is a serious error and that therefore the Impugned Decision cannot stand.<sup>104</sup>

38. The Appellant further complains of the Trial Chamber’s acceptance of the filing by Counsel of supporting documentation with his Response. He says that the Trial Chamber erred in accepting the supporting documentation without having first investigated whether the Appellant had given permission for this material to be disclosed. He says that the filing of this privileged material by Counsel shows a breach of trust by Counsel to the Appellant.<sup>105</sup> The Appellant also says that the Trial Chamber erred in permitting the Registrar to present evidence of conversations which Counsel informed the Registry that he had had with the Appellant, without considering the breach of confidentiality committed by Counsel in disclosing those conversations to the Registry. He says that a decision which is based upon evidence of this kind should not be permitted to stand.<sup>106</sup> The Appellant says that Counsel has shown by his actions that he has no loyalty to the Appellant, and that not only has he disclosed privileged communications to third parties, but he has also accused the Appellant of lying to the Tribunal.<sup>107</sup>

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<sup>102</sup> Appeal Brief, par 41.

<sup>103</sup> *Ibid.*, par 43.

<sup>104</sup> *Ibid.*, par 44.

<sup>105</sup> *Ibid.*, par 52.

<sup>106</sup> *Ibid.*, par 73.

<sup>107</sup> *Ibid.*, par 97.

39. The Appellant says that the solution imposed by the Trial Chamber in the assignment of a legal representative to him for a short period of time will not work. He says that this solution, while acknowledging that there is a problem between the Appellant and Counsel, shows a “profound misunderstanding of the magnitude of the problems at stake”.<sup>108</sup> He says that the Registrar’s view that any lack of confidence or trust which the Appellant has in his Counsel “can never be regarded to be more important than the harm done to his fair trial is untenable”. He says that, if there is, as in his case, a serious lack of confidence as well as sufficient grounds establishing this, then a trial in which there is no communication between an accused and his Counsel can never be a fair one. He complains that neither the Registrar nor the Trial Chamber has recognised this.<sup>109</sup> He says that the suggestion that an interlocutor can heal the rift between the parties underestimates the extent of the mistrust that exists, and fails to take into account the fact that Counsel wants to act as a “micro-manager” in complete control of the case.<sup>110</sup>

40. The Appellant further complains that Counsel has long been aware of a crisis of trust between himself and the Appellant, and that he has violated his ethical duty by not requesting that he be withdrawn as Counsel to the Appellant.<sup>111</sup> He says that the willingness of Counsel to continue to represent him shows that Counsel no longer has a realistic view of his relationship with the Appellant. He alleges that, taking into account all the problems that have arisen as a result of Counsel’s breaches of trust and miscommunication for over one year, the decision made by Counsel to appoint Ms Tomanović knowing that it would anger the Appellant, [REDACTED] demonstrate that the Trial Chamber was unrealistic in concluding that a situation of trust and communication could be re-established between the parties.<sup>112</sup>

41. Finally, the Appellant says that, while the Trial Chamber correctly observes that his right to a fair trial will be compromised by his refusal to meet with, instruct, and make use of his assigned Counsel, it does not “attach to that reality the one and only sound decision: to immediately order the Registrar to replace the Defence Team”.<sup>113</sup> He says that he “categorically refuses to accept assignment of a legal representative as decided by the Trial Chamber,” and that the conflict

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<sup>108</sup> *Ibid.*, par 10.

<sup>109</sup> *Ibid.*, par 83.

<sup>110</sup> *Ibid.*, par 84.

<sup>111</sup> *Ibid.*, pars 23-33.

<sup>112</sup> *Ibid.*, par 56.

<sup>113</sup> *Ibid.*, par 129.

between him and his assigned Counsel is of such seriousness that he cannot envisage that he could ever work with them again.<sup>114</sup>

### Analysis

42. Many of the submissions made by the Appellant under this heading relate to matters that were not put before the Trial Chamber. As already stated, while this is not a hearing *de novo*, and these are therefore not matters that the Appeals Chamber is required to consider, the Appeals Chamber has nonetheless decided to address the merits of each of these arguments for the reasons already given.

43. [REDACTED]

44. [REDACTED]

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<sup>114</sup> *Ibid.*, par 139.

<sup>115</sup> *Ibid.*, pars 38, 77, 131, 132

<sup>116</sup> Registrar's Response, pars 40-41, 43, 51,67, 85-91, 106; Counsel's Response, pars 1,8, 26, 28,39,40, 43,46;

<sup>117</sup> Motion for Extension of Time, par 5

<sup>118</sup> *Ibid.*

<sup>119</sup> Registrar's Response, pars 40-41, 43, 51, 67, 85-91, 106.

[REDACTED]

45. [REDACTED]

46. [REDACTED]

<sup>120</sup> Impugned Decision, par 46.  
<sup>121</sup> Article 18, Code of Professional Conduct for Defence Counsel.

[REDACTED]

47. [REDACTED]

48. The Appeals Chamber does not accept the argument of the Appellant that the Trial Chamber erred in allowing Counsel to file before it copies of correspondence between Counsel and the Appellant, or that it erred in not attaching any significance to the disclosure of conversations Counsel had with the Appellant to the Registry.<sup>125</sup> The Appellant had made serious allegations of breaches by Counsel of his professional obligations and Counsel was entitled to defend himself against those allegations. In making these allegations, the Appellant himself submitted copies of correspondence between himself and Counsel to the Registrar and to the Trial Chamber. By doing so, the Appellant waived his privilege over such communications for the purposes of his Motion for withdrawal of Counsel. In any event, the Appeals Chamber finds nothing improper in Counsel filing those communications for the purpose of establishing that he was committed to fulfilling his professional duties in relation to the Appellant, and to refute the Appellant's claims that he had failed to consult and communicate with him on matters pertaining to the defence of his case. None of the correspondence filed by Counsel, or of the communications entered into with the Registry, disclosed anything substantive in terms of the Appellant's defence at trial. They were merely directed to showing the working relationship between the parties and the quality of legal representation being accorded to the Appellant by Counsel.

<sup>122</sup> Status Conference, 27 Nov 2002, T 117.  
<sup>123</sup> Counsel's Response, par 1.  
<sup>124</sup> Appeal Brief, par 38.  
<sup>125</sup> *Ibid*, par 43-45, 73, 52.

49. The Appeals Chamber rejects the argument of the Appellant that the Trial Chamber erred in applying an objective test to see whether the Appellant's claims of a lack of trust between the parties had been established. By applying an objective standard, the Trial Chamber was assessing the reasonableness of the Appellant's assertions. That standard did not detract from a consideration of the subjective view of the Appellant that there was no trust between the parties, but it allowed the Trial Chamber to assess whether there were any reasonable grounds for the Appellant to hold that view. The Appeals Chamber is not satisfied that the Trial Chamber erred in finding that there were no such grounds.

50. The Appeals Chamber rejects the assertion of the Appellant that the Trial Chamber erred in accepting the submission of the Registrar "that any lack of confidence or trust that [the Appellant] may have had in his Counsel could never be regarded as more important than the harm done to his fair trial [...]".<sup>126</sup> In the Impugned Decision, the Trial Chamber referred to this submission made by the Registrar,<sup>127</sup> but did not base its decision upon it. The decision of the Registrar to refuse the Appellant's request that new counsel be assigned, and the Trial Chamber's confirmation of that decision, were based on the fact that neither found that there was any "objective" basis for the Appellant's request that he be assigned new counsel.<sup>128</sup> As there was no basis for Counsel to be withdrawn, an unnecessary replacement of counsel would infringe upon the right of the Appellant to be defended by Counsel thoroughly familiar with the case against him and who had already dedicated many hundreds of hours to his defence. The Trial Chamber therefore held that the retention of the Appellant's assigned Counsel would not only protect his right to be tried fairly but also his right to be tried expeditiously.<sup>129</sup> The Appeals Chamber finds no error in this reasoning.

51. Finally, the Appeals Chamber does not accept the argument of the Appellant that the Trial Chamber erred in finding that trust and communication between the parties could be restored and that the appointment of an interlocutor could assist in strengthening the relationship between the parties.<sup>130</sup> Counsel has clearly indicated that he is prepared for trial and willing to represent the Appellant.<sup>131</sup> Indeed, the Appellant acknowledges that neither Counsel nor Co-Counsel agrees that there are grounds for their withdrawal or that it would be in the interests of justice that they be

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<sup>126</sup> *Ibid.*, par 83.

<sup>127</sup> Impugned Decision, par 69.

<sup>128</sup> *Ibid.*, par 112-113.

<sup>129</sup> *Ibid.*, par 113.

<sup>130</sup> Appeal Brief, pars 65, 84.

<sup>131</sup> Impugned Decision, par 112.

withdrawn.<sup>132</sup> The only obstacle is the resistance of the Appellant. The Appeals Chamber agrees with the Trial Chamber that the appointment of a temporary “legal advisor” to assist the Appellant in overcoming his resistance to working with his appointed Counsel was the fairest course available to it, and the one which best served to protect the interests of the Appellant. In upholding this approach, the Appeals Chamber also endorses the finding of the Trial Chamber that:

“an accused does not have the right to unilaterally destroy the trust between himself and his counsel. Similarly, an accused does not have the right to claim a breakdown in communication through unilateral actions, included refusals to meet with or receive documents from his counsel, in the hope that such actions will result in the withdrawal of his counsel by the Registrar”.<sup>133</sup>

52. The Appellant emphasised in his Appeal Brief that Counsel should have sought a withdrawal from the case in light of the attitude taken by the Appellant towards his continued representation of him.<sup>134</sup> The Appeals Chamber does not agree. Once Counsel undertakes to represent an accused at the Tribunal, that Counsel has a professional obligation to fulfil the task undertaken unless there are sufficient grounds for him to request that he be withdrawn.

53. Under Article 9 (B) of the Code of Professional Conduct, Counsel may terminate or request withdrawal of his representation “if such termination or withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

- (i) the client has used counsel’s services to perpetrate a crime or fraud, or persists in a course of action involving counsel’s services that counsel believes is criminal or fraudulent;
- (ii) the client insists upon pursuing an objective that counsel considers repugnant or imprudent;
- (iii) the client fails to substantially fulfil an obligation to counsel regarding counsel’s services and has been given reasonable warning that counsel will terminate or request withdrawal of his representation unless the obligation is fulfilled; or
- (iv) other good cause for termination or withdrawal exists

54. In circumstances such as this, where an Appellant unjustifiably resists legal representation from assigned Counsel, Counsel’s professional obligations to continue to represent the accused remain. The Appeals Chamber is satisfied that Counsel in this case is committed to representing the Appellant, and that the Appellant will receive a fair trial with the assistance of his assigned Counsel. In dismissing the Appellant’s appeal, the Appeals Chamber wishes to make it clear to the

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<sup>132</sup> Appeal Brief, par 110.

<sup>133</sup> Impugned Decision, par 100.

<sup>134</sup> Appeal Brief, pars 24-32.



Appellant that he has now exhausted all avenues available to him to voice his objections that he has not been accorded that to which he has no justifiable reason to demand. The Tribunal will not entertain a demand by an Appellant for that to be granted to him to which he has established no entitlement. For the foregoing reasons, the Appeals Chamber dismissed the Appeal on 15 September 2003.

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

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Judge Mohamed Shahabuddeen  
Presiding

Dated this 7<sup>th</sup> day of November 2003  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**