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IT-02-60-T

D16711-D16708

23 MAY 2003

Case No. IT-02-60-T

Prosecutor v. Blagojević et. al.

DECISION

THE REGISTRAR,

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

CONSIDERING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended, and in particular Rules 44 and 45 thereof;

CONSIDERING the Directive on Assignment of Defence Counsel, as subsequently amended;

CONSIDERING the Code of Professional Conduct for Defence Counsel Appearing before the International Tribunal ("the Code of Conduct");

CONSIDERING the *Order on Appointment of Independent Legal Counsel* ("the Order") issued by Trial Chamber seized of the case ("the Trial Chamber") on 9 May 2003;

CONSIDERING that after considering the request of the accused, Mr. Michael Karnavas was assigned by the Registrar to represent Mr. Vidoje Blagojević ("the accused") as of 31 August 2001;

CONSIDERING that at the request of lead counsel, and in accordance with Article 16 (C) of the Directive, the Registrar assigned Ms. Suzana Tomanović as co-counsel on 25 September 2002;

CONSIDERING that in a letter dated 22 October 2002, the accused informed the Registry that he had "doubt in the wisdom and fullness of the assessment of Mr. Karnavas with regard to his choice of Mr. Tomanović as co-counsel";

CONSIDERING that at a Status Conference convened on 27 November 2002, the accused informed the Pre-Trial Judge that he did not wish his case to proceed with Ms. Suzanna Tomanović acting as his co-counsel, insisted that Ms. Tomanović had not been selected according to his wishes and requested that a new co-counsel of his choosing be assigned to work with his lead counsel Mr. Michael Karnavas;

CONSIDERING the *Decision on Oral Motion to Replace Co-Counsel*, issued on 9 December 2002, in which the Trial Chamber found that both lead counsel and co-counsel had been assigned by the Registrar in accordance with the relevant rules, that there were no other factors either presented by the accused or observed by the Trial Chamber after hearing the parties that would constitute good cause for the withdrawal of co-counsel, and therefore upheld the Registry's decision assigning Ms. Tomanović as co-counsel, denied the accused's oral motion, and determined that Ms. Tomanović could continue as co-counsel;

CONSIDERING that at the Status Conference held on 27 March 2003, the accused again raised concerns regarding his defence team, restated his request to have Ms. Tomanović withdrawn as co-counsel and expressed a lack of confidence in his lead counsel, stemming from Mr. Karnavas' refusal to abide by his wishes concerning the selection of co-counsel;

CONSIDERING that at that Status Conference held on 27 March 2003, the Pre-Trial Judge firstly noted that it was "for the Registrar to decide the merits of this request" and secondly specified that the Registrar should decide, whether Ms. Tomanović should be replaced, and, if a determination is made that Ms. Tomanović should not be replaced, whether the accused's concomitant request to replace his entire legal defence team should be granted;

CONSIDERING that on 8 April 2003, the Registry issued a decision ("the Decision of the Registrar"), denying both the accused's request to withdraw the assignment of co-counsel and his alternate request to replace his entire legal defence team, on the bases that no significant change in circumstances had taken place since the *Decision On Oral Motion To Replace Co-Counsel* issued by the Trial Chamber on 9 December 2002, that no prejudice would be incurred by the Accused by maintaining Ms. Tomanović as co-counsel, and that to replace co-counsel at this point in the proceedings might cause prejudice to the accused by delaying proceedings and thereby infringing his right to be tried expeditiously;

CONSIDERING that on 10 April 2003, the accused was provided with a copy of the Decision of the Registrar dated 8 April 2003 in a language he understands;

CONSIDERING that on 14 April 2003, a representative of the Registry met with the accused in order to inform him of the legal consequences of the Decision of the Registrar to deny both his request for withdrawal of co-counsel, and the alternate request to replace his defence team, and advised him that in accordance with Article 19 (F) of the Directive, he had the right to seek the President's review of the Decision of the Registrar within two weeks from the notification of the decision to him;

CONSIDERING that the accused did not submit to the President a request to review the Decision of the Registrar within the stipulated time period;

CONSIDERING that after the appearances of counsel on the record at the Pre-Trial Conference held on 5 May 2003 ("the Pre-Trial Conference"), the accused stated that he "did not have a lawyer present here today who would represent me as my defence counsel", asked that the "Chamber, as a guarantor and the protector of the rights of the accused also protect me in this sense" further stated that "I think it is sufficient if I say that I absolutely have no confidence in Mr. Karnavas and it would be a catastrophe for him to continue to represent me in this case and to defend me. This can be substantiated in several ways but, please, do not exhaust me", and requested that the Chamber "understand, I don't know what else I can say. I don't know what new reasons you would like to hear from me";

CONSIDERING that at the Pre-Trial Conference, the Office of the Prosecutor raised the issue as to who would properly protect the rights of the accused to appeal a legal ruling where that appeal would be in conflict with the position of the accused's counsel;

CONSIDERING that at the Pre-Trial Conference, counsel on the record for the accused, Mr. Karnavas, informed the Trial Chamber that in the absence of a decision to withdraw his assignment as lead counsel, he believed that it was consistent with his professional obligations to continue to provide legal representation to the accused;

CONSIDERING that after hearing the accused and the respective parties, the Presiding Judge informed the accused that the Trial Chamber would entrust the Registrar to assign an independent counsel to consult with the accused in relation to the status of his defence team and his previous requests for the withdrawal of the assignment of his defence team;

CONSIDERING that in the aforementioned Order of 9 May 2003, the Trial Chamber confirmed that the present defence team will continue to work on behalf of the accused, and requested that the Registrar appoint independent counsel to advise the accused on his rights in relation to assignment of counsel, and assist him in preparing documentation, if any, that may follow from their consultation on this issue;

- **CONSIDERING** that the Rules and the Directive contemplate that in situations where it is either not possible to ascertain clearly the wishes of the accused or it is not possible under the Rules and Regulations to facilitate their request, the Registrar may assign a counsel qualified in accordance with Rule 45(B) to an accused in order to ensure that the accused's interests are protected;

CONSIDERING that Mr. Jan Sjöcrona, attorney at law from The Hague, is currently listed on the Rule 45 list of counsel, and was previously a member of the Advisory Panel of the International Tribunal, which is constituted to advise the Registrar or the President on questions pertaining to the assignment of defence counsel;

CONSIDERING further that Mr. Sjöcrona has not appeared as a defence counsel before the International Tribunal and that his assignment as independent legal counsel to the accused would not give rise to any potential conflicts of interest;

NOTING that in accordance with Article 1 of the Code of Conduct, any person who has been assigned by the Registrar to represent a client is obliged to comply with the ethical obligations and requirements set out in the Code of Conduct;

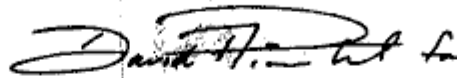
— **CONSIDERING** that although the mandate of the independent legal counsel does not extend to assisting the accused in the preparation of his defence, for the purposes of Article 1 of the Code of Conduct, he will be assigned by the Registrar to represent a client and will therefore be bound by the provisions of the Code of Conduct;

CONSIDERING that Article 27 (D) of the Code of Conduct provides that counsel shall not communicate with the client of another counsel without the authorisation of that client's counsel unless permitted under the Rules, this Code or any other applicable law;

CONSIDERING that on 21 May 2003, the accused informed a representative of the Registry that he would be willing to meet with an independent legal counsel, for the purpose of obtaining legal advice in relation to the assignment of counsel;

CONSIDERING that on 23 May 2003, Mr. Karnavas informed the Registry in writing that he would have no objection to an independent legal counsel meeting with the accused in his absence, for this purpose;

HEREBY DECIDES to assign Mr. Jan Sjöcrona, attorney at law from The Hague, as independent legal counsel, for the purpose of advising the accused on his rights in relation to assignment of counsel, and assisting him in preparing documentation, if any, that may follow from their consultations on this issue.



Hans Holthuis
Registrar

Done this 23rd day of May, 2003
The Hague
The Netherlands