

INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

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IT-98-32/1-PT
D1668 - D1664
05 December 2007

1668
MC

Case No. IT-98-32/1-PT
Prosecutor v. Milan Lukić

DECISION**THE REGISTRAR,**

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

NOTING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended (“Rules”), and in particular Rules 44 and 45 thereof;

NOTING the Directive on Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended (“Directive”), and in particular Articles 14(A) and 20(A) thereof;

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

CONSIDERING that Mr. Milan Lukić (“Accused”) was transferred to the seat of the Tribunal on 21 February 2006, and that his initial appearance was held on 24 February 2006;

CONSIDERING that the Accused has applied for the assignment of Tribunal-paid counsel pursuant to Article 7 of the Directive on the basis that he does not have sufficient means to remunerate counsel;

CONSIDERING that on 23 February 2006, at the request of the Accused and pursuant to Rule 62(B) of the Rules, the Registrar assigned Mr. Michael Karnavas, attorney-at-law from the United States, as duty counsel to the Accused for the purposes of his initial appearance and for such other matters as necessary until replacement counsel is assigned;

CONSIDERING that on 20 March 2006, the Registry informed the Accused that Mr. Karnavas could not be assigned as his permanent counsel due to a scheduling conflict;

CONSIDERING that on 6 April 2006, at the Accused’s request and pursuant to Article 11(B) of the Directive, the Deputy Registrar assigned Mr. Alan Yatvin, attorney-at-law from the United States, as counsel to the Accused for a period of 120 days, determining that an interim assignment of counsel was necessary to ensure that the Accused’s right to counsel was not affected while the Registry examines his ability to remunerate counsel;

CONSIDERING that Mr. Yatvin’s assignment as counsel to the Accused was extended on three occasions, on 16 August 2006, 22 November 2006 and 9 March 2007, in order to ensure that the

Accused's right to counsel is not affected while the Registry conducts its inquiry into the Accused's financial means, and that that inquiry is still ongoing;

CONSIDERING that in September 2006, the Accused made several allegations against Mr. Yatvin, such as Mr. Yatvin being paid by the Serbian Democratic Party to pass on information received from the Accused, Mr. Yatvin being a member of a terrorist organization ("The White Serbian Al Qaeda") and not wanting the truth to be told, and requested that he be withdrawn as his counsel;

CONSIDERING that Mr. Yatvin was asked to comment on the Accused's allegations which he categorically rejected and qualified as false and absurd;

CONSIDERING that on 28 September 2007, a representative of the Registry met with the Accused to discuss his allegations against Mr. Yatvin in person, and to explain the legal framework regulating the withdrawal of counsel, including Article 20(A)(i) of the Directive and the Tribunal's jurisprudence on the issue;

CONSIDERING that the Accused was informed that the Registrar was not satisfied that the withdrawal of Mr. Yatvin's assignment was in the interests of justice under Article 20(A)(i) of the Directive as the Accused's allegations were completely baseless, and that furthermore, the Registrar was satisfied that Mr. Yatvin had been performing his counsel duties diligently and competently;

CONSIDERING that on 18 January 2007, the Deputy Registrar assigned Ms Jelena Lopičić-Jancić, attorney-at-law from the Republic of Serbia, as co-counsel to Mr. Yatvin, in accordance with the expressed wish of the Accused, who had rejected several proposed co-counsel prior to that;

CONSIDERING that on 14 February 2007, the Accused requested that Ms Lopičić-Jancić take over the position of lead counsel and Mr. Yatvin be re-assigned as co-counsel, but that on 19 February 2007, the Accused changed his position and stated that he was satisfied with the composition of his defence team and that Mr. Yatvin should remain his lead counsel and Ms Lopičić-Jancić co-counsel;

CONSIDERING that in March 2007, the Accused renewed his request for the withdrawal of Mr. Yatvin, and raised the same or similar allegations against him;

CONSIDERING that on 24 March 2007, the Accused informed the Registrar that he wanted to pay for a defence counsel of his choice;

CONSIDERING that on 5 April 2007, the Registrar denied the request for the withdrawal of Mr. Yatvin's assignment based on a finding that none of the allegations made by the Accused was supported by evidence and that a withdrawal would therefore not be in the interests of justice pursuant to Article 20(A)(i) of the Directive, and requested the Accused to clarify if his 24 March 2007 statement meant that he wished to withdraw his request for Tribunal-paid counsel;

CONSIDERING that on 10 April 2007, the Accused indicated that he did not wish to withdraw his request for Tribunal legal aid;

CONSIDERING that subsequent to the denial of his request for Mr. Yatvin's withdrawal, the Accused continued making the same unsubstantiated allegations against his counsel in further submissions to the Registrar, dated 10 April 2007, 4 May 2007 and 19 July 2007, and to the President dated 14 July 2007;

CONSIDERING that in the meantime, the Accused interrupted all communications with Mr. Yatvin and refused to cooperate with him in any way despite Mr. Yatvin's attempts to restore contact with the Accused;

CONSIDERING further that in the course of an attempted visit by Mr. Yatvin to the Accused at the United Nations Detention Unit ("UNDU"), the Accused appeared to threaten to physically harm Mr. Yatvin;

NOTING that the Accused did, however, continue communicating with Ms. Lopičić-Jancić on a regular basis and continued working on the preparation of his case with her;

CONSIDERING that in light of the above developments, the Registrar deemed it justified to replace lead counsel in order to ensure that the Accused receives an effective legal representation and to protect the integrity of the judicial process;

CONSIDERING that this determination was not linked in any way to the Accused's allegations against Mr. Yatvin;

CONSIDERING that the Registrar advised the Accused that he would agree to replace Mr. Yatvin if the Accused identified a replacement counsel who was willing and able to take over the defence of the Accused, and who was admitted to the Tribunal's list of counsel eligible for assignment to indigent suspects and accused ("Rule 45 list"), or at least fulfilled all the requirements laid down in Rule 45 and could therefore be admitted to that list;

CONSIDERING that the Registry provided the Accused with independent legal advice on the potential effects of changing counsel at this stage of proceedings;

CONSIDERING that between mid-August and the beginning of October, the Accused requested the assignment of several counsel who did not fulfil the qualification requirements of Rule 45, and the Registry was directly approached by other counsel who claimed they had been retained by the Accused to act as his counsel before the Tribunal;

CONSIDERING that in correspondence to the Accused dated 21 August 2007, the Registry denied the Accused's request for the assignment of some of these counsel, reiterating that Mr. Yatvin could only be withdrawn if replaced by a fully qualified lawyer;

CONSIDERING that in letters to the Registry dated 22 and 27 August 2007, and a letter to the Trial Chamber dated 27 August 2007, filed in an English translation on 12 September 2007, the Accused stated that unless he was allowed to be represented by one of the counsel whose assignment had been denied by the Registrar, he would represent himself;

CONSIDERING that in a 28 August 2007 telephone conversation with the Accused, the Registry reiterated that replacement counsel had to fulfil the qualification requirements of Rule 45 and also informed the Accused of the applicable legal provisions on self-representation, asking him to clarify what appeared to be conflicting requests;

CONSIDERING that in light of the Accused's failure to propose a suitably qualified replacement counsel within a reasonable time, by letter of 5 October 2007, the Registry gave the Accused a deadline until 10 October 2007 to identify such a candidate;

CONSIDERING that on 10 October 2007, the Accused requested the replacement of Mr. Yatvin by Mr. Bojan Sulejić, attorney-at-law from the Republic of Serbia;

CONSIDERING that Mr. Sulejić is admitted to the Rule 45 list and has indicated his willingness to be assigned as replacement counsel to the Accused;

CONSIDERING that on 14 October 2007, the Registrar informed the Accused that he was prepared to replace Mr. Yatvin by Mr. Sulejić, on an exceptional basis;

CONSIDERING that thereupon, the Accused suddenly requested also co-counsel Ms Lopičić-Jancić and the entire remaining defence team to be withdrawn without providing any valid reason for his request;

CONSIDERING that on 23 October 2007, the Registrar denied the request, finding that such a withdrawal would not further the proper administration of justice at this stage of the proceedings, in particular in light of the necessity to ensure the continuity of the defence in light of the exceptional replacement of lead counsel in this case;

CONSIDERING that thereupon the Accused started harassing Ms Lopičić-Jancić by repeatedly calling her and members of her family to compel her to withdraw from the case,

CONSIDERING that at the same time, the Accused interrupted all communication with Ms Lopičić-Jancić with regard to the preparation of his case;

CONSIDERING further that on 6 November 2007, the Accused filed a disciplinary complaint against Ms Lopičić-Jancić before the Disciplinary Prosecutor of the Bar Association of Serbia claiming *inter alia* that Ms Lopičić-Jancić does not work in his best interest and refuses to withdraw from his case despite him demanding her to do so;

CONSIDERING that in a letter dated 27 November 2007 to the Registrar, Ms Lopičić-Jancić commented on *inter alia* the disciplinary complaint filed against her by the Accused, refuting the allegations made therein;

CONSIDERING that Ms Lopičić-Jancić has a right to defend herself against the allegations made by the Accused before the Disciplinary Prosecutor and that this may place her in a conflict of interest situation with regard to her representation of the Accused;

CONSIDERING further that the total interruption of communications by the Accused with his defence team at this stage of the proceedings makes it impossible for counsel to represent their client's best interests effectively, and that maintaining the current assignments would not serve the interests of justice;

CONSIDERING therefore that although none of the reasons brought forward by the Accused would normally justify the withdrawal of counsel, replacement of counsel in the specific circumstances of this case would contribute to the proper administration of justice and will preserve the integrity of the proceedings;

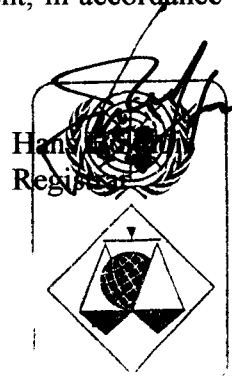
CONSIDERING that the Trial Chamber was consulted on the replacement of counsel in this case;

NOTING that the events which have lead to the replacement of counsel as outlined above have been caused by the Accused himself, and that any negative consequences for the defence of the Accused as a result of the replacement of counsel at this stage of the proceedings cannot be attributed to Mr. Yatvin, Ms. Lopičić-Jancić or the Registrar;

HEREBY DECIDES pursuant to Article 20 of the Directive and without prejudice to Article 19(B) of the Directive, to withdraw the assignments of Mr. Yatvin and Ms Lopičić-Jancić as lead and co-

counsel respectively, and to assign Mr. Sulejić as counsel to the Accused, effective as of the date of this decision;

DIRECTS Mr. Yatvin and Ms Lopičić-Jancić to hand over to Mr. Sulejić any case-related materials they received or produced during their assignment, in accordance with their duties under Article 9(D) of the Code of Conduct.



Dated this fifth day of December 2007
At The Hague,
The Netherlands.