

INTERNATIONAL CRIMINAL TRIBUNAL
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D 18226- D 18223
11 September 2009

Prosecutor v. Franko Simatović
Case No. IT-03-69-T

PUBLIC

DECISION

THE DEPUTY 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 the Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended (“Directive”), and in particular Articles 14, 16 and 20 thereof;

NOTING the Code of Professional Conduct for Counsel Appearing Before the International Tribunal (IT/125 REV.3) (“Code of Conduct”);

NOTING that on 18 July 2003, the Registrar assigned Mr. Zoran Jovanović, Attorney at Law from Serbia, as lead counsel to Mr. Franko Simatović (“Accused”) for a period of 120 days pending the Registry’s determination of the Accused’s eligibility for legal aid;

CONSIDERING that on 17 May 2004, the Registry assigned Mr. Jovanović as permanent counsel to the Accused, and found that the Accused was partially indigent and able to contribute \$145,196 to the cost of his defence (“Decision”);

CONSIDERING the Registrar’s Decision of 27 February 2006, which, noting that it was necessary to adjust certain aspects of the above Decision which had an impact upon the extent to which the Accused is able to remunerate counsel, confirmed Mr. Jovanović’s assignment as counsel to the Accused, and found that the Accused was able to remunerate counsel in the amount of US\$110,200;

CONSIDERING that on 7 February 2008, Mr. Jovanović submitted a written request to the Registrar requesting the assignment of Mr. Vladimir Domazet, Attorney at Law from Serbia, as co-counsel;

CONSIDERING that on 27 February 2008 the Deputy Registrar assigned Mr. Domazet as co-counsel to Mr. Jovanović;

CONSIDERING that on 2 August 2009 Mr. Zoran Jovanović passed away;

CONSIDERING that the Accused indicated to the Registry that he would be seeking the assignment of a replacement lead counsel and expressed concerns about his continued representation by the assigned co-counsel Mr. Domazet;

CONSIDERING that the Registry provided the Accused with a copy of the Tribunal's list of counsel eligible for assignment to indigent suspects and accused under Rule 45(E) of the Rules ("Rule 45 list");

CONSIDERING that on 21 August 2009, the Accused submitted a request in writing for the Registry to assign Mr. Mihaljo Bakrač, attorney at law from Belgrade, as his replacement lead counsel;

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

NOTING that Mr. Bakrač previously represented Milorad Krnojelac (IT-97-25) and Ranko Česić (IT-97-25) as Counsel in proceedings before this Tribunal;

CONSIDERING that the Registry is of the view that no conflict of interest exists between Mr Bakrač's former assignments and his representation of the Accused;

CONSIDERING that Mr. Bakrač is assigned as lead counsel in the case against Mr. Vladimir Lazarević before this Tribunal, which is currently on appeal;

CONSIDERING that on 19 August 2009, the Registrar invited Mr. Bakrač to comment on a possible scheduling conflict between the Accused's case and Mr. Lazarević's case, and to explain how he would handle the resulting workload;

CONSIDERING that in a letter dated 25 August 2009, Mr. Bakrač made a written submission detailing how he would allocate his time in order to complete the work to be performed on both the Accused's case and Mr. Lazarević's case;

CONSIDERING that Mr. Bakrač indicated his intention to request the withdrawal of Mr. Domazet and provided reasons in support of his request;

CONSIDERING that Mr. Domazet requested that his assignment as co-counsel be withdrawn due to the breakdown of the relationship between himself and the Accused;

CONSIDERING that Mr. Bakrač indicated his intention to request the assignment of Mr. Vladimir Petrović, attorney at law from Belgrade, as replacement co-counsel in the event of the former's assignment;

CONSIDERING that on 11 March 2008, Mr. Petrović was assigned as a legal assistant to Mr. Jovanović in the Accused's defence team, in accordance with Article 16(E) of the Directive, and has been working closely with Mr. Jovanović and the Accused on the preparation of the case for trial ;

CONSIDERING that Mr. Petrović is admitted to the Rule 45 list and has indicated his willingness to be assigned as co-counsel to Mr. Bakrač;

CONSIDERING that Mr. Petrović is currently assigned as co-counsel in the case against Mr. Nikola Šainović before this Tribunal, which is currently on appeal;

CONSIDERING that on 28 August 2009, the Registrar invited Mr. Petrović to comment on a possible scheduling conflict between the Accused's case and Mr. Šainović's case, and to explain how he would handle the resulting workload;

CONSIDERING that in a letter dated 1 September 2009, Mr. Petrović made a written submission detailing how he would allocate his time in order to complete the work to be performed on both the Accused's case and Mr. Šainović's case;

NOTING Articles 20 (A) (ii) and 20 (E) of the Directive, which provide that in the interests of justice, the Registrar may withdraw the assignment of co-counsel at the request of lead counsel and assign replacement counsel;

CONSIDERING that both the Accused and Mr. Lazarević have consented in writing to the dual assignment of Mr. Bakrač;

CONSIDERING that both the Accused and Mr. Šainović have consented in writing to the dual assignment of Mr. Petrović;

CONSIDERING that the Registrar is satisfied, in accordance with Article 16(G)(ii) of the Directive, that the dual assignments of Mr. Bakrač and Mr. Petrović present no scheduling conflict and no potential or actual conflict of interest, and that the assignments would not otherwise prejudice the defence of either of the accused or the integrity of the proceedings;

CONSIDERING further that whilst a unilateral interruption of communication by an accused with his counsel, especially shortly after the commencement of trial, would not normally justify the withdrawal of counsel, in the specific circumstances of this case the Registrar is satisfied that replacing Mr. Domazet as co-counsel would serve the interests of justice and would contribute to preserving the integrity of the proceedings;

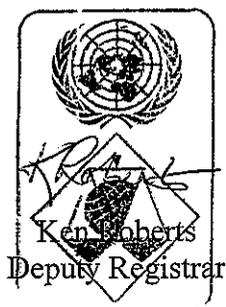
CONSIDERING that the Registry will require the re-assignment of Mr. Domazet as a legal consultant to the Accused's defence team for a minimum of thirty (30) days to assist in the transition of knowledge to Mr. Bakrač;

FINDING that the interests of justice would be served in allowing the replacement of co-counsel under these circumstances;

HEREBY DECIDES

- 1) to assign Mr. Bakrač as counsel to the Accused, effective as of the date of this decision;
- 2) to withdraw the assignment of Mr. Domazet and to assign Mr. Vladimir Petrović as co-counsel to Mr. Bakrač, effective as of the date of this Decision;

DIRECTS Mr. Domazet to hand over to Mr. Bakrač any case-related materials he received or produced during his assignment, in accordance with his duties under Article 9(D) of the Code of Conduct, and to cooperate with the newly constituted defence team for the period of his assignment as legal consultant.



Dated this 11th day of September 2009,
At The Hague,
The Netherlands.