

UNITED
NATIONS



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-95-14/2-T
Date: 3 September 1999
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Mohamed Bennouna
Judge Patrick Robinson

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 3 September 1999

PROSECUTOR

v.

**DARIO KORDIĆ
MARIO ČERKEZ**

**DECISION ON THE REGISTRAR'S WITHDRAWAL OF THE
ASSIGNMENT OF DEFENCE COUNSEL**

The Office of the Prosecutor

Mr. Geoffrey Nice
Ms. Susan Somers
Mr. Patrick Lopez-Terres
Mr. Kenneth Scott

Counsel for the Accused

Mr. Mitko Naumovski, Mr. Turner Smith Jr., Mr. Ksenija Turković, Mr. Rober A. Stein,
Mr. Stephen M. Sayers, Mr. David F. Geneson, and Mr. Leo Andreis, for Dario Kordić
Mr. Božadir Kovačić and Mr. Goran Mikuličić for Mario Čerkez

1. The Registrar has withdrawn the assignment of Defence counsel for the accused Mario Čerkez by a decision filed 10 August 1999¹, on the basis of having obtained information from the media that the accused was receiving substantial financial support for his legal representation from a Croatian support group called “*Hrvatski uzbek u Hagu*”, which auctions paintings and works of art and was said to have received DM 4,300,000 from such auctions, and that the accused was thus able to finance his own representation for the purposes of Article 19 (A) of the Directive on Assignment of Defence Counsel (“the Directive”).

2. The accused has filed a motion² before the Trial Chamber against this withdrawal under Article 19 (D) of the Directive based on the grounds

- that the sum of money obtained from the auctions was far less than alleged by the Registrar, and the information relied on in the decision was unreliable,
- that the accused had not obtained any money for the purposes of his legal representation before the International Tribunal, but had merely received minor amounts for the support of his family and his personal use at the Detention Unit, which he had declared to the Registrar,
- that on receiving the decision of the Registrar the accused approached the support group, requesting it to fund the costs of his legal representation, but the support group responded that it did not have sufficient funds to do so,
- that the withdrawal of the assignment leaves the accused without legal representation, thus violating the accused’s right to legal assistance under Article 21, paragraph 4 (d), of the International Tribunal’s Statute.

3. The Trial Chamber notes that in a decision on similar matters in *Kupreškić et al.* on 3 September 1999³, Trial Chamber II of the International Tribunal has found that a Trial Chamber has “jurisdiction to hear the objections under Articles 19 (D) and 13 (C) of the Directive” on the ground that “if after the initial appearance it is for the Trial Chamber to decide the issue of assignment of counsel on a preliminary motion, then the same must apply in the later stages of the proceedings”.

4. The Trial Chamber finds that there was insufficient evidence for the Registrar to take the drastic step of reversing the accused’s status of indigency and removing the assignment of his defence counsel in the middle of the trial. As noted by Trial Chamber II in *Kupreškić et al.*, “[m]edia reports may serve

¹ Decision of the Registrar, 10 August 1999.

² Motion of the Accused Mario Čerkez for the Review of the Decision of the Registrar on Withdrawing the Assignment of Counsel, 2 Sept. 1999.

as a first step to launch an investigation into the veracity of the reported facts. That newspapers and other kinds of media are very often a highly unreliable source of information is common knowledge. Their reports, unsubstantiated by other material, cannot by themselves be sufficient evidence for a court of law". In the view of this Trial Chamber, if media reports gave rise to doubt about the income of the accused, the matter should have been investigated further before any possible finding could be made.


For those reasons the Trial Chamber

HEREBY

REVERSES the decisions of the Registrar of 10 August 1999 with respect to the accused Mario Čerkez and

ORDERS that the assignment of Defence counsel shall continue without interruption with regard to the accused Mario Čerkez.

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


Richard May
Presiding Judge

Dated this third day of September 1999
At The Hague
The Netherlands

[Seal of the Tribunal]

³ Decision on the Registrar's Withdrawal of the Assignment of Defence Counsel, *Prosecutor v. Kupreškić et al.* IT-95-16-T, TC II, 3 Sept. 1999.