



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-98-34-PT
Date: 30 November 1999
Original: English
French

IN THE TRIAL CHAMBER

Before: Judge Almiro Simões Rodrigues, Presiding
Judge Fouad Riad
Judge Patricia Wald

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 30 November 1999

THE PROSECUTOR

v.

**MLADEN NALETILIĆ
VINKO MARTINOVIĆ**

**DECISION ON THE APPEAL OF THE ACCUSED
MARTINOVIĆ AGAINST THE REGISTRY'S REFUSAL
OF HIS REQUEST FOR ASSIGNMENT OF COUNSEL**

The Office of the Prosecutor:

**Mr. Franck Terrier
Mr. Vassili Poriouvaev**

Defence Counsel:

Mr. Branko Šerić

TRIAL CHAMBER I (hereinafter the “Trial Chamber”) of the 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 (hereinafter the “Tribunal”),

PURSUANT to Articles 20 and 21 of the Statute of the Tribunal, Rule 45 of the Rules of Procedure and Evidence of the Tribunal (hereinafter the “Rules”) and the “Directive on Assignment of Defence Counsel” (IT/37/Rev.7, 22 July 1999, hereinafter the “Directive”),

NOTING the Decision of the Registrar of the Tribunal of 12 October 1999 to deny the request of the accused Martinović (hereinafter the “Accused”) for assignment of counsel (hereinafter the “Decision”),

NOTING the Appeal of the Accused against this Decision dated 15 October 1999 (hereinafter the Appeal”),

NOTING the annex to the Appeal dated 20 October 1999 submitted by Mr. Šerić in response to a request from the Trial Chamber (then composed otherwise) of the same day on “whether the Appeal of 15/10/99 had been filed in due time”,

NOTING the Request submitted on 8 November 1999 by the Trial Chamber to the Registry to receive a copy of the file on which the Registry relied in making its Decision (hereinafter the “File”) and **NOTING** also the File,

NOTING the letter of the Accused of 24 November 1999 in which the Accused notes *inter alia* that in view of the Registry’s Decision he is not in a position to prepare his defence,

NOTING the correspondence of Mr. Šerić of 25 November 1999 in which he informs the Trial Chamber that he has until now conducted the defence of the Accused before the Tribunal *pro bono* but that he has informed the Accused that he can no longer continue to do so,

CONSIDERING that it is vital for the proper administration of justice that the rights of the Accused be respected and, more specifically, the right to counsel,

CONSIDERING that an appeal against a decision of the Registrar's refusing to assign counsel must be lodged pursuant to Article 13 of the Directive "not later than 60 days after his first appearance and, in any event, before the hearing on its merits"; that this first appearance took place on 12 August 1999; that the Decision of the Registry was taken on 12 October 1999; that, in these circumstances, the Appeal of 15 October 1999 is admissible,

CONSIDERING that Rule 45 of the Rules provides *inter alia* that "[t]he criteria for determination of indigency shall be established by the Registrar and approved by the Judges",

CONSIDERING that Article 7 of the Directive states that "[i]n order to determine whether the [...] accused is indigent, there shall be taken into account means of all kinds of which he has direct or indirect enjoyment or freely disposes [...] and that "account shall also be taken of the means of the spouse [...] as well as those of persons with whom he habitually resides",

CONSIDERING that although the Tribunal, and in particular the Registrar, is responsible for determining whether and to what extent an accused is indigent, this appraisal must first be based on the material provided by the accused who must prove that he has insufficient or no means available,

CONSIDERING that this proof may be presented using any appropriate methods, documents written or otherwise such as, but without this list being exhaustive, registration certification for motor vehicles (ships, aircraft), income declarations, pay-slips, bank or postal accounts, property certification, rent attestations, written proof of payment / non-payment of income tax (on real estate and capital), share or bond portfolios, written proof of lifestyle, divorce or separation proceedings, court decisions granting legal aid and photographs, whether the methods involve the accused himself, his family, his close relations or his acquaintances but not such that the accused in question may deem himself authorised to mention only the property or other means which he might own or to which he might be entitled in the territory of the State of which he is a national or in the territory where he habitually resides; that, in principle, it is incumbent upon the accused to request the assistance of the State if and when need be,

CONSIDERING that the File contains a limited amount of information; that, in particular, it appears that the Government of the Republic of Croatia, to which the Accused has moreover not turned, has not responded to the questions raised by the Registrar,

CONSIDERING furthermore that, at his own expense, the Accused enjoyed the assistance of the Counsel of his choice in the person of Mr. Šerić for the duration of the criminal proceedings brought against him before the Croatian courts,

CONSIDERING therefore that it is not clear from the File and the elements of the case that the Accused lacks the means permitting him to conduct his Defence,

CONSIDERING consequently that by refusing the Request of the Accused the Registrar has not committed an obvious error in her assessment such as to justify, as matters currently stand, that the Decision be overturned,

CONSIDERING, however, that Sub-rule 45(E) of the Rules stipulates that if a request is refused “a further request may be made by [...] an accused to the Registrar upon showing a change in circumstances”,

CONSIDERING that the Trial Chamber is of the opinion that the relevant provisions of the Rules and the Directive are intended, in particular, not to grant assigned counsel to the accused systematically but, where need be, to cover the additional costs incurred by an accused because of the particular nature of the Tribunal, the cases which it must hear and the location of its seat in relation to where the accused come from or reside; that these provisions allow for the possible situation whereby the Accused, if he had to prove the limited extent of his means, could nevertheless continue to enjoy the assistance of Mr. Šerić with the additional costs to be borne in whole or in part by the Tribunal pursuant to Article 18(C) of the Directive,

FOR THE FOREGOING REASONS,

REJECTS the Appeal of the Accused against the Decision of the Registrar refusing him assigned counsel,

STATES that the Accused must present to the Registrar any new element relating to the possibility of the Tribunal bearing all or part of the costs and fees incurred in the conduct of his defence.

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

Done this thirtieth day of November 1999,
At The Hague,
The Netherlands.

(signed)

Almiro Simões Rodrigues
Presiding Judge, Trial Chamber I

(Seal of the Tribunal)