



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-95-4-PT  
IT 95-8/1-PT

Date: 6 September 2002

Original: ENGLISH

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**IN THE TRIAL CHAMBER**

**Before:** Judge Richard May, Presiding  
Judge Patrick Robinson  
Judge O-Gon Kwon

**Registrar:** Mr. Hans Holthuis

**Decision of:** 6 September 2002

**PROSECUTOR**

v.

**DUŠKO KNEŽEVIĆ**

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**DECISION ON ACCUSED'S REQUEST FOR REVIEW OF REGISTRAR'S  
DECISION AS TO ASSIGNMENT OF COUNSEL**

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**Office of the Prosecutor:**

Ms. Joanna Korner  
Mr. Kapila Waidyaratne

**The Accused:**

Duško Knežević

**Counsel for the Accused:**

Mr. Thomas Moran

**THIS 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 (“International Tribunal”),

**BEING SEISED** of an application from the accused Duško Knežević (“Accused”) dated 24 June 2002 and filed in one of the working languages of the Tribunal on 5 July 2002 (“Application”), challenging the decision by the Registrar of the International Tribunal of 10 June 2002 assigning Mr. Thomas Moran as defence counsel to the Accused (“Impugned Decision”) and, instead, seeking the assignment of Mr. Draško Zeć as counsel,

**NOTING** that the Accused argues in the Application that the Impugned Decision “would considerably infringe on [his] right to choose an attorney”,

**NOTING** that, in the Impugned Decision, the Registrar rejected the request of the Accused dated 23 May 2002 for the assignment of Mr. Miodrag Deretić, attorney-at-law from Prijedor, on the basis that Mr. Deretić was assigned since 21 August 2001 as co-counsel to Mr. Zoran Žigić who was formerly charged in the same indictment as the Accused with crimes in the same location; that the Accused’s subsequent request for the assignment of Mr. Draško Zeć, also attorney-at-law from Prijedor, was rejected on the ground that Mr. Zeć and Mr. Deretić shared the same law office in Prijedor, and the professional relationship between both attorneys was not sufficiently clear to ensure that a potential conflict of interest would not also affect Mr. Zeć,

**NOTING** the “Registry Comments on Trial Chamber’s Invitation to Comment on the Accused’s Request for Review of Registrar’s Decision as to Assignment of Counsel”, filed partly confidentially and *ex parte* on 19 July 2002 (“Registry Comments”), wherein the Registrar reiterates the reasons for rejecting the Accused’s requests, adding that, in response to his request for further information on the circumstances of their professional co-operation, all the attorneys did was to deny any conflict of interest; that the Registrar submitted that in a number of non-privileged telephone conversations, Mr. Zeć suggested to the Accused that he should request his

appointment as counsel, and stated that this would enable Mr. Deretić to act alongside him; that the Registrar submits that such an arrangement would contradict his decision not to assign Mr. Deretić, and if Mr. Zeć were assigned, that could result in a fee-splitting arrangement between both attorneys,

**NOTING** that the Registrar also submits that the assessment whether a conflict exists is to be made by the Registry under the supervision of the Trial Chamber and not by the affected counsel or the Accused; that it is for the Registry to determine how a conflict of interest can be remedied in accordance with the Code of Professional Conduct for Defence Counsel Appearing before the International Tribunal (“Code of Conduct”),

**NOTING** the “Motion for the Confirmation of Duško Knežević’s Counsel Status” filed by Mr. Draško Zeć on 30 August 2002, requesting his recognition by the Trial Chamber as the counsel chosen by the accused pursuant to Article 21 paragraph 4 (d) of the Statute of the International Tribunal (“Statute”),

**CONSIDERING** that, contrary to the submission of the Accused and Mr. Draško Zeć, the right of indigent accused to counsel of his own choosing is not without limits; that the decision for the assignment of counsel rests with the Registrar, “having to take into consideration the wishes of the accused, unless the Registrar has reasonable and valid grounds not to grant the request”,<sup>1</sup>

**CONSIDERING** that the Registrar has the primary responsibility in the determination of matters relating to qualification, appointment or assignment of

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<sup>1</sup> *Prosecutor v. Gérard Ntakirutimana*, Decision on the Motions of the Accused for Replacement of Assigned Counsel/Corr., Case No. ICTR-96-10-T, ICTR-96-17-T, 11 June 1997. The European Court of Human Rights case of *Croissant v. Germany*, Judgement of 25 September 1992, Series A no. 237-B, para. 29 provides, in relation to Art. 6(3) of the ECHR, that the right to be defended by counsel of one’s own choice “cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned”. It further held that when appointing defence counsel “regard to the defendant’s wishes” should had but the court “can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice”. While these principles are applicable to the domestic criminal systems of States which have ratified the ECHR, the Trial Chamber considers them to be of persuasive value.

counsel<sup>2</sup> in accordance with the relevant provisions of the Statute, the Rules of Procedure and Evidence of the International Tribunal (“Rules”),<sup>3</sup> the Directive on Assignment of Defence Counsel issued by the International Tribunal (“Directive”) and the Code of Conduct,

**CONSIDERING** however, that matters relating to the assignment of counsel for an accused affect the conduct of a trial; that the Chamber has a statutory obligation to ensure the fair and expeditious conduct of the proceedings, with full respect for the rights of the accused,

**RECOGNISING** however that, as the Registrar has responsibility for the assignment of Counsel, this power should only be used in exceptional cases,

**BEARING** in mind that the recent decision of this Trial Chamber in the Halilović case<sup>4</sup> was confined to the particular circumstances of that case, in which the Accused sought a review by the Trial Chamber of the Registrar decision on the basis of Article 13(B) of the Directive, and the Trial Chamber held that it had no power on the basis of that provision to review the Registrar’s decision to assign a particular counsel,

**CONSIDERING** however, on further reflection, that in the exercise of its power under Rule 54 to issue such orders as may be necessary for the conduct of the trial, the Trial Chamber is empowered to review the decision the Registrar; that Trial Chambers of the International Tribunal<sup>5</sup> and the International Criminal Tribunal for Rwanda<sup>6</sup> have reviewed Registrars’ decisions to assign counsel,

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<sup>2</sup> *Prosecutor v. Enver Hadžihasanović et al.*, Decision on Prosecution’s Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kubura, Case No. IT-01-47-PT, 26 Mar. 2002.

<sup>3</sup> An important provision in this respect is Rule 45, on “Assignment of Counsel”. Rule 45(A) provides: “Whenever the interests of justice so demand, counsel shall be assigned to suspects or accused who lack the means to remunerate such counsel. Such assignment shall be treated in accordance with the procedure established in a Directive set out by the Registrar and approved by the permanent Judges”.

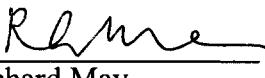
<sup>4</sup> *Prosecutor v. Sefer Halilović*, Decision on Sefer Halilović’s Application to Review the Registrar’s Decision of 19 June 2002, Case No. IT-01-48-PT, 1 Aug. 2002.

<sup>5</sup> *Prosecutor v. Enver Hadžihasanović et al.*, Decision on Prosecution’s Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kubura, Case No. IT-01-47-PT, 26 Mar. 2002, in particular paras 21, 23 & 55; *Prosecutor v. Milan Martić*, Decision on Appeal against Decision of Registry, Case No. IT-95-11-PT, 2 Aug. 2002.

**CONSIDERING** that the proposal by Mr. Zeć (overheard in a non-privileged telephone conversation) that the Accused should appoint him as counsel, and that that would enable Mr. Deretić to act alongside him constitutes improper conduct, since it would, in effect, nullify the Registrar's decision not to appoint Mr. Deretić; and that, therefore, the Registrar was justified in his decision not to appoint Mr. Zeć as counsel to the Accused,

**HEREBY DENIES** the Application.

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

  
Richard May  
Presiding

Dated this sixth day of September 2002  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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<sup>6</sup> *Prosecutor v. Gérard Ntakirutimana*, Decision on the Motions of the Accused for Replacement of Assigned Counsel/Corr., Case No. ICTR-96-10-T, ICTR-96-17-T, 11 June 1997; *Jean-Paul Akayesu v. Prosecutor*, Appeals Chamber Decision relating to the Assignment of Counsel, Case No. ICTR-96-4-A, 27 July 1999.