



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-99-37-PT
Date: 19 February 2003
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 19 February 2003

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
DRAGOLJUB OJDANIĆ
NIKOLA ŠAINOVIĆ**

DECISION ON DEFENCE REQUEST FOR REVIEW OF REGISTRAR'S DECISION

The Office of the Prosecutor

**Ms. Carla Del Ponte
Mr. Geoffrey Nice
Ms. Cristina Romano**

Counsel for the Accused

**Mr. John Livingston, for Milan Milutinović
Mr. Tomislav Višnjić and Mr. Peter Robinson, for Dragoljub Ojdanić
Mr. Toma Fila and Mr. Vladimir Petrović, for Nikola Šainović**

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”),

NOTING the Decision of the Registrar, dated 13 September 2002, filed on 17 September 2002 (“Registrar’s Decision”), pursuant to which the accused Nikola Šainović (“the Accused”) should bear the costs of 1700 hours of investigative work at the pre-trial stage,

NOTING the “Defence Request for Review of the Registrar’s Decision from 13th of September 2002”, filed on 26 September 2002, and the Trial Chamber’s “Invitation to Registry to Comment on Defence Request for Review of the Registrar’s Decision from the 13th of September 2002”, filed on 3 October 2002,¹

NOTING the “Registry Comments on Trial Chamber’s Invitation to Comment on Defence Request for Review of Registrar’s Decision from the 13th of September 2002”, filed on 10 October 2002, together with the “Defence Response to the ‘Registry Comments on Trial Chamber’s Invitation to Comment on Defence Request for Review of Registrar’s Decision from the 13th of September 2002’”, filed on 17 October 2002,

NOTING the Trial Chamber’s “Decision on the Defence Response to the ‘Registry Comments on Trial Chamber’s Invitation to Comment on Defence Request for Review of Registrar’s Decision from the 13th of September 2002’”, filed on 10 December 2002 (“First Decision”), and in which the Trial Chamber decided as follows:²

- (i) Instructs the Registrar to clarify the basis upon which he arrived at the decision that the Accused should bear the cost of 1700 hours of investigative work at the pre-trial stage; in this regard, if the Registrar uses a formula, that formula should show how 1700 hours result from its application;
- (ii) Instructs the Registrar to explain the basis for taking into account the assets of the wife and mother of the Accused, in the light of the provisions of Article 8(B) of the Directive on Assignment of Defence Counsel [“Directive”], and in the absence of any evidence that the

¹ *Prosecutor v Milutinović et al.*, Invitation to Registry to Comment on Defence Request for Review of the Registrar’s Decision from 13th of September 2002, Case No. IT-99-37-PT, 3 Oct. 2002.

² *Prosecutor v Milutinović et al.*, Decision on Defence Response to the “Registry Comments on Trial Chamber’s Invitation to Comment on Defence Request for Review of Registrar’s Decision from the 13th of September 2002”, Case No. IT-99-37-PT, 10 Dec. 2002, p. 2.
Case No. IT-99-37-PT

assets of his wife and mother, constitute means “of which he has direct or indirect enjoyment or freely disposes”;

- (iii) Upholds the Registrar’s decision to take into account the flat of the Accused in Belgrade, on the grounds that, for the reasons stated by the Registrar, he can freely dispose of it; and
- (iv) Instructs the Registrar to keep under review the status of the Accused’s financial assets, and in that regard, to take into account any future change in that status resulting from any loss of earnings in the event that the Constitutional Charter of Serbia and Montenegro is adopted and the Federal Assembly is dismissed,

NOTING the “Registrar’s Response to the Trial Chamber’s Order dated 10 December 2002”, filed on 28 January 2003 (“Registrar’s Response”), and the “Defence Response to Registrar’s Response to the Trial Chamber’s Order dated 10 December 2002”, filed on 5 February 2003 (“Defence Response”) in which the Defence makes the following submissions:

- (i) that the Accused received his salary as a representative in the Federal Assembly of the Federal Republic of Yugoslavia (“FRY”) and, on 4 February 2003, a new Constitutional Charter of Serbia and Montenegro was adopted and the Federal Assembly dissolved, with the result that the mandate of the Accused and his salary have been terminated,³
- (ii) that the Registry was wrong to take into account the pension of the mother of the Accused, since the mother, who is 88 years old, earns a monthly pension of 100 Euros, which is insufficient to meet her own needs, and that, in fact, the family is bearing the costs of the mother’s needs,⁴
- (iii) that, taking into account the first submission, the disposable monthly income of the Accused is 31 Euros,⁵ and that if one disregards the salary of the Accused as well as the mother’s pension, the disposable monthly income is minus 83 Euros,⁶
- (iv) that the Registry was wrong to take into account the apartment in which the family of the Accused resides, since if he were to dispose of it “his family would be left without a roof

³ Defence Response, para. 6 (a).

⁴ *Ibid*, para. 6 (b).

⁵ *Ibid*, paras 7-8.

⁶ *Ibid*, para. 9.

over their heads”,⁷ and that the value of the apartment, were it to be sold, would be significantly reduced because it is the subject of a criminal investigation,⁸

NOTING the Registrar’s Response that “in the absence of any concrete evidence that the Accused enjoys or freely disposes of the means of his wife and his mother, the Registry nonetheless considered that their incomes contribute to the monthly communal expenses for food, drink, accommodation and living”,⁹

CONSIDERING that Article 8 (A) of the Directive provides that “a suspect or accused who requests the assignment of counsel must produce evidence that he is unable to remunerate counsel”,

CONSIDERING that, by virtue of the provisions of Article 8 (B) of the Directive, in determining the ability of the Accused to remunerate counsel, account can only be taken of the assets of the spouse of the Accused, as well as those of his mother, if those assets constitute means in respect of which the Accused has direct or indirect enjoyment, or of which he can freely dispose,

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence of the International Tribunal,

HEREBY DECIDES as follows:

- (1) The objection raised by the Defence in relation to the apartment of the Accused is dismissed since the Chamber has already determined¹⁰ that the Registrar was correct to take account of it;
- (2) As was required by the First Decision,¹¹ the Registrar should now, unless there is compelling evidence to the contrary, discount the salary of the Accused since the source of that salary, i.e. his status as representative in the FRY Federal Assembly, has disappeared;
- (3) In the light of the objection that the mother’s monthly pension is insufficient to meet her needs, and that, in fact, the family meets those needs, account should not be taken of that pension;

⁷ *Ibid*, para. 13.

⁸ *Ibid*, para. 15.

⁹ Registrar’s Response, para. 7.

¹⁰ First Decision, *supra*, p. 3, at (iii).

¹¹ *Ibid*, at (iv).

- (4) Account may be taken of the wife's income, unless the Accused satisfies the Registrar, within a period of one month from the date of this decision, that it does not constitute means in respect of which the Accused has direct or indirect enjoyment, or of which he can freely dispose;
- (5) A new assessment of the Accused's ability to remunerate counsel should be carried out on the bases set out above.

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


Richard May
Presiding

Dated this nineteenth day of February 2003
At The Hague
The Netherlands

[Seal of the Tribunal]