

IT-97-25/1-PT

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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: IT-97-25/1-PT

Date: 16 October 2003

Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr Hans Holthuis

Decision of: 16 October 2003

THE PROSECUTOR

v.

Mitar RASEVIĆ

DECISION ON ASSIGNMENT OF DEFENCE COUNSEL

The Accused

Mitar Rasević

Other Parties

Slaviša Prodanović

1. Slaviša Prodanović has sought a review of the Registrar's decision refusing to assign him as counsel for Mitar Rasević. For the reasons given below, the Registrar's decision is affirmed.

2. Rasević was transferred into the custody of the Tribunal on 15 August 2003. He requested that Prodanović be assigned as his defence counsel. On 18 August 2003, the Registrar filed a complaint against Prodanović before the Disciplinary Panel established pursuant to the Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal (IT/125 Rev. 1). On 26 August 2003, the Registrar decided to deny assignment of Prodanović as Rasević's counsel. The decision was made orally. On 1 September 2003, Prodanović sought Presidential review of the Registrar's decision. The Registrar has waived his right to respond.

3. Article 14(D) of the Directive on Assignment of Defence Counsel (IT/73/Rev. 9) ("Defence Counsel Directive") provides, in relevant part, that the Registrar "may refuse a request for assignment of counsel where [...] in accordance with Article 45 of the Code of Conduct [...] a disciplinary procedure under Part III of the Code of Professional Conduct has been initiated against that counsel." It also provides that "[c]ounsel may seek recourse against the Registrar's decision before the President within two weeks of having been notified of that decision."

4. Although the Registrar's decision was not written, both the minutes of the meeting between Registry representatives and Rasević on 26 August 2003 and Prodanović's 1 September 2003 letter to the President indicate that the Registrar based his refusal to assign Rasević on the fact that a disciplinary hearing had been initiated against him. Under Article 14(D), Prodanović is entitled to seek review of the Registrar's decision by the President.

5. Prodanović raises several claims. His principal one seems to be that the Registrar has acted improperly in temporarily suspending him from practicing before the Tribunal because, under Article 45 of the Code of Conduct, the authority to issue orders of temporary suspension rests with the Disciplinary Panel. Prodanović is correct that it is the Disciplinary Panel that has the authority under Article 45 to temporarily suspend defence counsel from practicing before the Tribunal, but he is mistaken in asserting that the Registrar has issued such an order. The Registrar's decision denied Prodanović assignment as defence counsel in a particular case, pursuant to Article 14(D) of the Defence Counsel Directive; it did not suspend him from practicing before the Tribunal generally under Article 45 of the Code of Conduct.

6. Article 14(D) of the Defence Counsel Directive permits the Registrar to refuse assignment when a disciplinary procedure has been "initiated" against counsel under Article 45 of the Code of

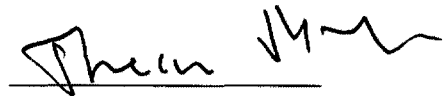
Conduct. Although his pleading is not entirely clear, Prodanović may be arguing that the Registrar may only refuse assignment under Article 14(D) of the Defence Counsel Directive once an order of temporary suspension has been issued pursuant to Article 45 of the Code of Conduct. If so, he is mistaken. The fact that such a procedure is initiated is sufficient. There is no further requirement that that procedure be concluded for the Registrar to be empowered to refuse an assignment of counsel pursuant to Article 14(D) of the Defence Counsel Directive. In any event, the Disciplinary Panel has since issued its decision on 6 October 2003 suspending the Respondent with immediate effect.¹

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

Dated this 16th day of October 2003,

At The Hague,

The Netherlands.



Judge Theodor Meron

President

[Seal of the Tribunal]

¹ Decision by the Disciplinary Panel on Case DP-2-3, 6 Oct 2003, par 45.