

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: 5 November 2003
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr Hans Holthuis
Decision of: 5 November 2003

THE PROSECUTOR

v.

Mitar RASEVIĆ

DECISION ON APPEAL AGAINST DISCIPLINARY PANEL DECISION

The Accused

Mitar Rasević

Other Parties

Slaviša Prodanović

1. Mr Slaviša Prodanović has filed an appeal against the decision of the Disciplinary Panel suspending him from practice at the Tribunal in accordance with Article 45 (C) of the Code of Conduct.¹ Mr Prodanović argues that the Disciplinary Panel erred in holding that the Code of Professional Conduct of 2002 was applicable to his case. He also argues that the time period to bring disciplinary proceedings against him had expired.

2. The Disciplinary Panel was established under the amended Code of Professional Conduct of 2002 ("2002 Code"). At the time when the misconduct took place the Code of Professional Conduct of 1997 applied ("1997 Code"). The Disciplinary Panel found that the 2002 Code could be applied to Mr Prodanović on the basis of the 1997 Code. Mr Prodanović argues that this finding is erroneous. He says that the 1997 Code does not make explicit reference to enforcement and disciplinary procedures by a Disciplinary Panel and as such it cannot be the basis for the application of the 2002 Code.² He says that the panel erred in finding that Article 22 of the 1997 Code, which provides that Counsel must abide by and submit to any enforcement and disciplinary procedures as may be established by the Tribunal in accordance with the Rules, permits the application of the 2002 Code.³ He claims that Article 1(4) of the 1997 Code⁴, considered in relation to Article 22 of the same Code⁵, indicates that proceedings in accordance with that Code can only be applied in accordance with the Tribunal's Rules of Procedure and Evidence ("Rules").⁶ Mr Prodanović claims that under the Tribunal's Rules at the time his misconduct occurred the only body authorised to conduct a proceeding against him was the Attorney Bar Association with competence for the territory of Foca/Srbinje pursuant to Rule 46(B).⁷

3. Mr Prodanović made similar objections before the Disciplinary Panel and his arguments were rejected. That decision was correct. As the Disciplinary Panel noted, all defence counsel appearing

¹ Decision by the Disciplinary Panel on Case DP-2-3, 6 October 2003 ("Decision").

² Appeal of Mr Slavšia Prodanović to Disciplinary Decision against him for Professional Misconduct, 16 Oct 2003 ("Appeal Brief"), paras 9-11.

³ Appeal Brief, para 13.

⁴ Article 1(4) of the 1997 Code states: While Counsel is bound by this Code, it is not, and should not be read as if it were, a complete or detailed code of conduct for counsel. Other standards and requirements may be imposed on the conduct of Counsel by virtue of the Tribunal's inherent jurisdiction and the code of conduct of any national body to which counsel belongs.

⁵ Article 22 provides that: Counsel must abide by and voluntarily submit to any enforcement and disciplinary procedures as may be established by the Tribunal in accordance with the Rules.

⁶ Appeal Brief, paras 18-19.

⁷ *Ibid*, paras 23-24.

before the Tribunal are bound by the Code of Professional Conduct of Counsel as provided in Rule 44.⁸ Article 22 of the 1997 Code explicitly stated: “Counsel must abide and voluntarily submit to any enforcement and disciplinary procedures as *may be* established by the Tribunal in accordance with the Rules”.⁹ As such, the 1997 Code explicitly foresaw the possibility of an enforcement and disciplinary procedure being established in the future. The fact that that mechanism was not established until the amended 2002 Code does not preclude its application to misconduct that took place prior to its establishment.

4. Mr Prodanović also objects to the Disciplinary Panel conclusion that the commencement of disciplinary proceedings against him filed on 18 August 2003 was timely because his misconduct only came to the attention of the complainant on 30 August 2002. Article 41(3) of the 2002 Code provides: “The complaint shall be submitted within twelve months after the alleged misconduct is brought to the attention of the complainant or within twelve months after the complainant should have reasonably known about the existence or occurrence of the alleged misconduct”. Mr Prodanović argued that the Registrar should have been aware of his alleged misconduct on 27 July 2002 when the OLAD Financial Investigator had information from Mr Goran Jovanović that he had not performed any investigative works in the case of *Prosecutor v Kunarac et al.* The Disciplinary Panel, however, found that this fact was insufficient to establish a reasonable knowledge on the part of the complainant of the misconduct of Mr Prodanović and that “[a] process of determining the reasonableness of an allegation cannot be said to be completed without undergoing a procedure of further verification upon becoming aware of the said allegation”.¹⁰ This finding was reasonable. The information obtained by the OLAD Financial Investigator was not of itself sufficient to establish reasonable knowledge on the part of the complainant. It was, however, sufficient to put the complainant on notice that additional investigation was needed. This additional investigation resulted in a statement of the Legal Adviser of 30 August 2002. The panel was reasonable to conclude that this additional statement was sufficient to establish reasonable knowledge on the part of the complainant and that for the purposes of Article 41(3) time began to run from that date.¹¹ Accordingly, the complaint against Mr Prodanović was timely filed because it was filed on 18 August 2003, less than twelve months after 30 August 2002.

⁸ Decision, para 10.

⁹ Decision, paras 11-12.

¹⁰ Decision, para 22.

¹¹ Decision, paras 20-23.

6. Mr Prodanović's last argument, that the time limit for the completion of disciplinary proceedings against him had also expired, is likewise rejected.¹² The 2002 Code places no time limit upon the completion of disciplinary proceedings against Counsel, and there is no merit in the arguments advanced by Mr Prodanović to the contrary. In any event, as reasonable knowledge of the misconduct by Mr Prodanović did not come to the attention of the Registrar until 30 August 2002, the completion of that procedure in the issuing of the decision of the Disciplinary Panel on 6 October 2003 did not constitute an unreasonable or prejudicial delay to Mr Prodanović.

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

Dated this 5th day of November 2003,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]

¹² Appeal Brief, para 31.