



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-99-37-PT
Date: 26 November 2003
Original: English

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision: 26 November 2003

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
DRAGOLJUB OJDANIĆ
NIKOLA ŠAINOVIĆ**

**DECISION ON DEFENCE REQUEST FOR REVIEW OF
REGISTRAR RE-ASSESSMENT OF ABILITY TO
REMUNERATE COUNSEL**

The Office of the Prosecutor:

Mr. Geoffrey Nice
Ms. Cristina Romano
Mr. Milbert Shinn

Counsel for the Accused:

Mr. Eugene O'Sullivan and Mr. Slobodan Žečević, for Milan Milutinović
Mr. Tomislav Višnjić, Mr. Peter Robinson, and Mr. Vojislav Seležan, for Dragoljub Ojdanić
Mr. Toma Fila, Mr. Zoran Jovanović, and Mr. Goran 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”),

BEING SEISED of a “Defence Request for Review of the Registrar’s Re-Assessment of the Accused Ability to Remunerate Counsel” filed on 23 October 2003 (“Motion”) by the Defence of Nikola Šainović (“Defence”) seeking a review of a Registrar’s decision concerning the Accused’s ability to contribute to the costs of his defence,

NOTING the “Re-Assessment of the Accused Ability to Remunerate Counsel” filed by the Registrar on 13 October 2003,¹ pursuant to which the accused Nikola Šainović should bear the costs of 1620 hours of investigative and legal work within the Tribunal’s legal aid system (“Registrar’s decision”),

NOTING that the Defence claims that the Registrar’s assessment is not accurate and puts forward a number of arguments as to why the Registrar’s findings are erroneous,

CONSIDERING that the Registrar has the primary responsibility in the determination of matters relating to remuneration of counsel under the legal aid system of the Tribunal,² in accordance with the relevant provisions of the Rules of Procedure and Evidence (“Rules”),³ and the Directive on Assignment of Defence Counsel issued by the International Tribunal (“Directive”),⁴

CONSIDERING that the first issue for consideration is whether there is a procedure laid down in the Rules for resolving a disagreement between the Registrar and the Defence in relation to a

¹ See also *Prosecutor v. Milutinović et al.*, “Decision on Defence Request for Review of Registrar’s Decision”, Case No. IT-99-37-PT, 19 Feb. 2003.

² *Prosecutor v. Enver Hadžihasanović et al.*, “Decision on Urgent Motion for *Ex Parte* Oral Hearing on Allocation of Resources to the Defence and Consequences Thereof for the Rights of the Accused to a Fair Trial”, Case No. IT-01-47-PT, 17 June 2003, p. 2.

³ An important provision in this regard is found in Rule 45 on “Assignment of Counsel” which 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”; on the other hand, Rule 45(E) provides: “The Registrar shall, in consultation with the permanent Judges, establish the criteria for the payment of fees to assigned counsel”.

⁴ The Directive identifies the circumstances in which an accused will be accepted by the Registrar as lacking the means to remunerate counsel (and therefore entitled to legal aid), and it places the onus upon the accused of establishing that lack of means (Articles 6 (A) & 8 (A)). He is required to make a declaration of his means, and the Registrar is permitted to inquire into his means (Article 10 (A)). Various matters may be taken into account in determining that issue, including the means of the accused himself, and those of his spouse and of those with whom he habitually resides, the apparent lifestyle of the accused and his enjoyment of any property (Article 8 (B) & (C)).

determination by the Registrar that an accused has the means to contribute to the costs of his defence,

CONSIDERING that in accordance with Article 11 of the Directive, the Registrar must determine how far the accused lacks the means to remunerate counsel, and thus the extent to which the accused is entitled to legal aid,⁵

CONSIDERING that where there is a disagreement relating to the calculation of fees, payment of remuneration, or reimbursement of expenses of Defence Counsel, the Registrar is required to make a decision, after consulting the President and, if necessary, the Advisory Panel,⁶

CONSIDERING that the Appeals Chamber recently held that “where the Directive expressly provides for a review of the Registrar’s decision, the Trial Chamber cannot interfere in the Registrar’s decision”,⁷

CONSIDERING that, in the view of the Trial Chamber, the Motion falls directly within the terms of Article 31 of the Directive; the procedure provided therein is therefore applicable in the present case, the Trial Chamber cannot interfere with the Registrar’s decision,

CONSIDERING ALSO that the Defence in this case did not have the benefit of the recent ruling of the Appeals Chamber when it filed this Motion,⁸

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

⁵ Article 11 of the Directive (“Decision by the Registrar”) reads as follows: (A) After examining the declaration of means laid down in Article 7 (B) and (C) and relevant information obtained pursuant to Article 10, the Registrar shall determine how far the suspect or accused lacks means to remunerate counsel, and shall decide, providing reasons for his decision: (i) without prejudice to Article 18, to assign counsel and choose for this purpose a name from the list drawn up in accordance with Rule 45 (B) of the Rules and Article 14; or, (ii) without prejudice to Article 18, that the suspect or accused disposes of means to partially remunerate counsel in which case the decision shall indicate which costs shall be borne by the Tribunal; or (iii) not to grant the request for assignment of counsel.

⁶ Article 31 of the Directive (“Settlement of disputes”) provides: “In the event of disagreement on questions relating to calculation and payment of remuneration or to reimbursement of expenses, the Registrar shall make a decision, after consulting the President and, if necessary, the Advisory Panel”.

⁷ *Prosecutor v. Milutinović et al.*, Decision on Interlocutory Appeal on Motion for Additional Funds, Case No. IT-99-37-AR73.2, 13 Nov. 2003, para. 19.

⁸ *Ibid.*

HEREBY FINDS the Motion **INADMISSIBLE** and **NOTIFIES** the Defence that the Motion is hereby transmitted to the Registrar for determination.

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



Richard May
Presiding

Dated this twenty-sixth day of November 2003
At The Hague
The Netherlands

[Seal of the Tribunal]