

UNITED
NATIONS

IT-95-11-PT
D3446 - D3443
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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-95-11-PT

Date: 1 July 2004

Original: English

IN TRIAL CHAMBER I

Before: Joaquín Martín Canivell, Pre-trial Judge

Registrar: Mr. Hans Holthuis

Decision of: 1 July 2004

PROSECUTOR

v.

Milan MARTIĆ

EX-PARTE

**DECISION ON DEFENCE'S MOTION FOR REVIEW OF
REGISTRAR'S DECISION NOT TO RANK THE CASE TO
LEVEL III COMPLEXITY**

Counsel for the Accused:

Mr. Predrag Milovančević

BEING SEISED of the “Urgent and Ex-Parte Defence Motion for a Proper Ranking of the Case in the Pre-trial Phase” filed on 29 April 2004, whereby the Defence requests the Trial Chamber to issue “an order directing the Registrar to rank the case at level III of complexity (leadership) in the pre-trial phase and, accordingly, allocate full Level III allotment to the Defence” (the “Motion”);¹

NOTING that upon his detention on remand on 15 May 2002, the accused Milan Martić (the “Accused”) qualified for legal aid in accordance with Rule 45 of the Rules of Procedure and evidence;² that the amount of legal aid granted to the Defence of the Accused was determined by the Registrar on the basis of the provisions of the Directive on Assignment of Defence Counsel (the “Directive”) which states that for the pre-trial phase (which is the subject of this case) the amount of lump sum payments for preparation for trial made to the defence in each case depend upon the ranking of the particular case; that the ranking of a case intended to represent the work necessary to be carried out for the defence to be ready for trial is made by the Registrar on the basis of “complexity” factors;³ that in view of the complexity of the case at that time the Registrar ranked the case to Level I complexity;

NOTING that on 2 May 2003, following amendments brought to the indictment against the Accused and pursuant to Article 22 of the Directive,⁴ the Registry ranked the case of the Accused to Level II complexity and accordingly allotted an additional amount of 700 working hours to the lead-counsel and 1000 working hours to the support Defence team of the Accused;

NOTING that on 24 November 2003 the Defence requested the Registrar to upgrade the case of the Accused to Level III complexity; that on 20 January 2004, the Registry denied the Defence’s request but allocated additional 800 hours of work to the lead counsel and 100 hours to the support

¹ The Motion, p. 9.

² Article 21.4(d) of the Tribunal’s Statute requires the Tribunal to provide legal assistance to those accused that are unable to provide legal assistance of their own choosing. The Accused was found to be indigent by the Registry of the International Tribunal.

³ The cases may be ranked according to difficult (Level I), very difficult (Level II) and leadership (Level III). Factors to be considered to make such a determination include the number and nature of counts in the indictment, the possible amendments of the indictment, the nature of preliminary motions and challenges to the Tribunal’s jurisdiction, the number of accused joined in the same case, the number of witnesses and documents involved, the geographical territory covered in the indictment, the previous ranking of the accused within the military or political hierarchy and the legal issues expected to arise in the course of the trial. The system of lump sum payments is described in general terms in the Report of the International Tribunal for the Former Yugoslavia to the United Nations General Assembly on the Structure and Functioning of the Legal Aid System, 31 May 2003 (“Report to the UN”), paras 18-32.

⁴ Article 22(A) of the Directive on Assignment of Defence Counsel states in full:

Where counsel has been assigned, the costs of legal representation of the suspect or accused necessarily and reasonably incurred shall be met by the Tribunal subject to the budgetary provisions, rules and regulations, and practices set by the United Nations. All costs are subject to prior authorization by the Registrar. If authorization was not obtained, the Registrar may refuse to meet the costs. The Registrar establishes maximum allotments for each defence at the beginning of every stage of the procedure taking into account his estimate of the duration of the phase. In the event that a phase of the procedure is substantially longer or shorter than estimated, the Registrar may adapt the allotment. In the event of

Defence team of the Accused; that shortly thereafter, on 2 February 2004, the Defence reiterated its request to the Registrar for an upgrade of the case to Level III complexity;

CONSIDERING that in accordance with the rules of the Tribunal the Registrar has the primary responsibility in the determination of matters relating to the remuneration of counsel under the Tribunal's legal aid system;⁵ that Article 22(A) of the Directive provides that in the event of a disagreement on the maximum legal aid allotment, the Registrar makes a decision after consulting the Trial Chamber, and if necessary the Advisory Panel;

CONSIDERING that the Trial Chamber was consulted in accordance with Article 22(A) of the Directive by virtue of a consultative power of a non-contentious nature; that the Trial Chamber only provides information related to specifics of the case which should enable the Registrar to take an informed decision in the event of a disagreement with the Defence;

NOTING that on 19 March 2004, after having consulted the Trial Chamber in accordance with Article 22(A) of the Directive, the Registry denied the Defence's request dated 2 February 2004 (the "Impugned Decision");

NOTING that the Rules of the Tribunal do not explicitly provide for a review of the Registrar's decisions by a Trial Chamber;

CONSIDERING however that in accordance with the consistent holding by the Tribunal's Trial Chambers that questions relating to the legal representation of an accused may affect the conduct of a trial so that in the exercise of its powers under Rule 54 of the Rules and the Trial Chamber's statutory obligation to ensure a fair and expeditious conduct of the proceedings with full respect for the rights of the accused, the Trial Chamber is empowered to review the Registrar's decision;⁶

disagreement on the maximum allotment, the Registrar shall make a decision, after consulting the Chamber and, if necessary, the Advisory Panel.

⁵ See Rule 45 of the Rules of Procedure and Evidence and the Directive on Assignment of Defence Counsel, IT/73/REV. 9.

⁶ *Prosecutor v. Milutinović et al.*, Decision on Interlocutory Appeal on Motion for Additional Funds, Case No. IT-99-37-AR73.2, 13 November 2003; *Prosecutor v. Strugar*, Decision on Defence Request for Review of Registrar's Decision and Motion for Suspension of all Time Limits, Case no. IT-01-42-PT, 19 August 2003; *Prosecutor v. Hadžihašanić*, Case No. IT-01-47-PT, 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, 17 June 2003.

CONSIDERING that the Trial Chamber may review the administrative decision of the Registrar in exceptional circumstances, in particular in circumstances indicating that the Registrar exercised his margin of appreciation in a manifestly unreasonable manner;⁷

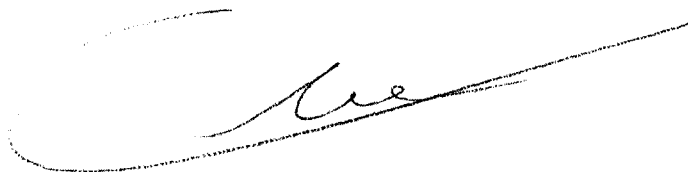
FINDING that on the basis of the submissions of the Defence there exist no circumstances showing that the Registrar made the Impugned Decision in a manifestly unreasonable manner; that accordingly the Impugned Decision cannot be reviewed by the Trial Chamber;

PURSUANT to Rule 54 of the Rules of Procedure and Evidence;

HEREBY REJECTS the Motion.

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

Dated this 1st of July 2004
At The Hague,
The Netherlands.



Joaquín Martín Canivell,
Pre-Trial Judge

[Seal of the Tribunal]

⁷ In relation to the interference of a Chamber in an administrative decision, the Appeals Chamber stated: "A judicial review of an administrative decision made by the Registrar in relation to legal aid is concerned ... with the propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it. The administrative decision will be quashed if the Registrar has failed to comply with the legal requirements of the Directive. This issue may in the particular case involve a consideration of the proper interpretation of the Directive. The administrative decision may also be quashed if the Registrar has failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or if he has taken into account irrelevant material or failed to take into account relevant material, or if he has reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test). These issues may in the particular case involve, at least in part, a consideration of the sufficiency of the material before the Registrar, but (in the absence of established unreasonableness) there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled, *Prosecutor v. Miroslav Kvočka et al.*, Decision (Appeals Chamber) on Review of the Registrar's Decision to Withdraw Legal Aid From Zoran Žigić, Case No. IT-98-30-A/R73; February 2003, para. 13; In the *Hadžihašanić* case, the pre-Trial Chamber stated that "in the implementation of the legal aid payment system is a primary responsibility for the Registrar and that the Trial Chamber would only be called upon to act if the facts of the case would show that no reasonable Registrar could have acted in the way as was done in the present case", see above-mentioned "Decision on Urgent Motion for an Ex-parte Oral Hearing on Allocation of Resources to the Defence and Consequences Thereof for the Rights of the Accused to a Fair Trial".