



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-95-17-S

Date: 19 October 2005

Original: ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Order of: 19 October 2005

PROSECUTOR

v.

Miroslav BRALO

**DECISION ON THE ACCUSED'S EMERGENCY MOTION SEEKING REVIEW OF
A SECOND DECISION OF THE REGISTRY; AND ASSIGNMENT OF VIRGINIA
LINDSAY AS CO-COUNSEL**

Office of the Prosecutor:

Mr. Mark Harmon

Counsel for the Defence:

Mr. Jonathan Cooper

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”),

HAVING BEEN ASSIGNED the case *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-S, by an “Order Assigning a Case to a Trial Chamber,” issued by the President of the International Tribunal on 27 September 2005,

NOTING the Defence request of 9 August 2005 to the Registrar that Ms. Virginia Lindsay be assigned as co-counsel to the accused Miroslav Bralo (“the Accused”),¹

NOTING the Registrar’s 25 August 2005 denial of that request,²

NOTING the Defence “Motion Seeking Review of the Decision of the Registry and Assignment of Virginia Lindsay as Co-Counsel,” filed in Trial Chamber I on 7 September 2005,

NOTING that the Registrar removed Ms. Lindsay from the Rule 45 List of counsel eligible for assignment to indigent accused (“Rule 45 List”) on 20 September 2005 because she “no longer satisf[ie]d] the requirements of Article 14(A)(iii)”³ of the Directive on Assignment of Defence Counsel (“Directive”),

NOTING the “Decision on Motion Seeking Review of Registrar’s Decision Denying the Assignment of Ms. Virginia Lindsay as Co-Counsel,” issued by Trial Chamber I on 21 September 2005 (“Decision of Trial Chamber I”), which quashed the Registrar’s decision of 25 August 2005 refusing to assign Ms. Lindsay as co-counsel and referred the matter back to the Registrar for reconsideration,

¹ See “Motion Seeking Review of the Decision of the Registry and Assignment of Virginia Lindsay as Co-counsel,” 7 September 2005, at Confidential Annex H.

² See *ibid.*, at Confidential Annex I.

³ Emergency Motion Seeking Review of a Second Decision of the Registry; and Assignment of Virginia Lindsay as Co-Counsel, 5 October 2003, at Annex B, p. 1. Article 14(A)(iii) requires assigned counsel to “possess[] established competence in criminal law and/or international criminal law/international humanitarian law/international human rights law.”

NOTING the Registrar's 29 September 2005 decision that the Defence request to assign Ms. Lindsay as co-counsel was moot in light of her removal from the Rule 45 List,⁴

BEING SEIZED OF an "Emergency Motion Seeking Review of a Second Decision of the Registry; and Assignment of Virginia Lindsay as Co-Counsel," filed by the Accused on 5 October 2005 ("Motion"), in which he requests a review of the Registrar's refusal to assign Ms. Virginia Lindsay as his co-counsel and an order that she be so assigned,

NOTING the "*Confidential* Submission of the Registry Pursuant to Rule 33 of the Rules of Procedure and Evidence Regarding Miroslav Bralo's Emergency Motion Seeking Review of a Second Decision of the Registry; and Assignment of Virginia Lindsay as Co-Counsel," filed on 11 October 2005,

NOTING the "Defendant's Reply to Submission of the Registry Regarding Motion Seeking Review of a Second Decision of the Registry; and Assignment of Virginia Lindsay as Co-Counsel," filed on 18 October 2005,

CONSIDERING that there is no provision in the Rules of Procedure and Evidence of the International Tribunal ("Rules"), nor in the Directive, that gives a Trial Chamber jurisdiction to review either the Registrar's removal of counsel from the Rule 45 List or the Registrar's refusal to assign a particular co-counsel to an accused,⁵

CONSIDERING the "Decision on Interlocutory Appeal on Motion for Additional Funds," issued on 13 November 2003 in *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-AR73.2, in which the Appeals Chamber stated that exercises of jurisdiction in the absence of explicit provisions should "be closely related to the fairness of the trial, and ... should not be used as a substitute for a general power of review which has not been expressly provided,"

⁴ See "Emergency Motion Seeking Review of a Second Decision of the Registry; and Assignment of Virginia Lindsay as Co-Counsel," 5 October 2005, at Annex A.

⁵ See *Prosecutor v. Halilović*, IT-01-48-PT, in which this Trial Chamber stated that "Article 13(B) [of the Directive] does not provide a right to apply to a Trial Chamber for a review of the decision of the Registrar assigning a particular counsel to an Accused." Decision on Sefer Halilović's Application to Review the Registrar's Decision of 19 June 2002, 1 August 2002, at p. 3 (emphasis in original).

CONSIDERING that the Accused has not alleged that his Motion is closely related to the fairness or integrity of the proceedings in the present case, that he continues to be represented by Mr. Jonathan Cooper and that this Trial Chamber does not believe that the Registrar's actions have affected the fairness of the proceedings,

CONSIDERING that the Decision of Trial Chamber I, which accepted the Defence assertion that "the fairness of the trial [was] at stake"⁶ because of "the failure of the Registrar to provide sufficient reasons"⁷ for his refusal to appoint Ms. Lindsay as co-counsel, does not apply to the present Motion because the Registrar's actions have now been explained,

CONSIDERING ALSO that, where Trial Chambers have reviewed the Registrar's decisions regarding assignment of counsel, such decisions have implicated the fairness of the proceedings,⁸

CONSIDERING FURTHER that the Defence is most likely not without recourse in this matter,⁹

CONSIDERING FINALLY that there is no competent basis on which this Chamber can exercise jurisdiction to determine the Motion,

PURSUANT TO Rule 54 of the Rules,

HEREBY DISMISSES the Motion.

⁶ Decision on Motion Seeking Review of Registrar's Decision Denying the Assignment of Ms. Virginia Lindsay as Co-Counsel, 21 September 2005, at p. 2.

⁷ *Ibid.* at p. 4.

⁸ See, e.g., *Prosecutor v. Knežević*, Case No. IT-95-4, IT-95-8/1-PT, in which this Trial Chamber reviewed the Registrar's refusal to appoint the accused's preferred counsel on the basis of "a potential conflict of interest." Decision on Accused's Request for Review of Registrar's Decision as to Assignment of Counsel, 6 September 2002, at p. 2; *Prosecutor v. Hadžihasanović et al.*, IT-01-47-PT, in which Trial Chamber II stated that "the concrete issue of qualification, appointment and assignment of counsel is properly within the jurisdiction of this Chamber where it can be shown that it affects, or is likely to affect, the right of the Accused to a fair and expeditious trial or the integrity of the proceedings." Decision on Prosecution's Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kubura, 26 March 2002, at para. 23.

⁹ See *Prosecutor v. Šljivančanin*, No. IT-95-13/1-PT, in which the President of the International Tribunal exercised jurisdiction over a Defence motion involving the "Registrar's decisions concerning the qualifications of particular counsel." Decision on Assignment of Defence Counsel, 20 August 2003, at para. 16.

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



Judge Robinson
Presiding

Dated this nineteenth day of October 2005
At The Hague
The Netherlands

[Seal of the Tribunal]