



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-02-54-Misc.1
Date: 12 May 2006
Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Fausto Pocar, President
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Andréia Vaz
Judge Theodor Meron

Registrar: Mr. Hans Holthuis

Order of: 12 May 2006

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON "ASSIGNED COUNSEL APPEAL AGAINST THE 'DECISION ON
SUBMISSION OF FORMER COURT-ASSIGNED COUNSEL' FILED ON 6 APRIL 2006
AND CONFIDENTIAL ANNEX 1"**

The Office of the Prosecutor:

Ms. Carla Del Ponte

Former Assigned Counsel:

Mr. Steven Kay Q.C.
Ms. Gillian Higgins

1. The Appeals 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 (“Appeals Chamber” and “International Tribunal”, respectively), is seized of the “Assigned Counsel Appeal Against the ‘Decision on Submission of Former Court-Assigned Counsel’ Filed on 6 April 2006 and Confidential Annex 1” filed on 13 April 2003 (“Appeal”).¹ Mr. Steven Kay, Q.C., and Ms. Gillian Higgins, who served as court-assigned counsel to the accused Slobodan Milošević until his death (collectively, “Former Assigned Counsel”), have purported to file this Appeal before the Appeals Chamber against a decision rendered by Trial Chamber I on 6 April 2006² (“Impugned Decision”). In the Impugned Decision, the Trial Chamber refused to entertain a Motion³ filed by Former Assigned Counsel requesting that it lift the confidential status of all pleadings and medical reports relating to the provisional release application of the deceased Mr. Milošević and the litigation arising from his medical treatment in the United Nations Detention Unit in the Hague (“UNDU”) and confidential annexes filed in relation thereto. The Trial Chamber reached its decision on the basis that the Motion was improperly filed before it, and it did not have jurisdiction to entertain it.⁴

2. At the outset, the Appeals Chamber notes that there is no basis in the Rules of Procedure and Evidence of the International Tribunal (“Rules”) for the Appeals Chamber to accept the Appeal from the Impugned Decision as validly filed. The Appeal is not filed as of right under Rule 72 of the Rules and was not otherwise certified by the Trial Chamber pursuant to Rule 73 of the Rules. Further, the Appeals Chamber notes that the proceedings to which Former Assigned Counsel were assigned were terminated on 14 March 2006 by Trial Chamber III (“Order”).⁵ Former Assigned Counsel’s role as Assigned Counsel to Mr. Milošević was necessarily terminated at that time. To that end, on 17 March 2006, the Deputy Registrar issued a formal Decision terminating the assignment of Assigned Counsel effective from the date of the Trial Chamber’s Order.⁶ As such, Former Assigned Counsel is not a party to proceedings at this Tribunal as defined by Rule 2 of the Rules, and has no standing to petition a Chamber of the Tribunal.

¹ “Assigned Counsel Appeal Against the ‘Decision on Submission of Former Court-Assigned Counsel’ Filed on 6 April 2006 and Confidential Annex 1,” 13 April 2006.

² *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Submission of Former Court-Assigned Counsel, 6 April 2006.

³ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, “Assigned Counsel Motion to Lift the Confidential Status of All Pleadings and Medical Reports Relating to (i) the Assigned Counsel Request for Provisional Release, and (ii) the Litigation Arising from the Medical Treatment of Mr. Slobodan Milošević in the United Nations Detention Unit and Confidential Annexes A and B,” 17 March 2006 (“Motion”).

⁴ Impugned Decision, p. 2.

⁵ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Terminating the Proceedings, 14 March 2006.

⁶ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision of Deputy Registrar, 17 March 2006.

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3. In the purported Appeal, Former Assigned Counsel acknowledge both of these difficulties. With respect to the “lacuna concerning the jurisdiction of the Appeals Chamber”, they request the Appeals Chamber to exercise its inherent jurisdiction and accept its Appeal as validly filed.⁷ They say that it is well established that courts may use their inherent jurisdiction to regulate their own proceedings and to prevent abuse of process. They refer to the decision of the Appeals Chamber in the *Delalić et al.*⁸, case where the Appeals Chamber held that the inherent powers of the Tribunal derive “from its judicial function and from the provisions of Articles 20 and 21 of its Statute, to control its proceedings in such a way as to ensure that justice is done and, particularly in relation to matters of practice, that the trial proceeds fairly and expeditiously”.⁹ They argue that there is nothing in the Rules or the Statute of the International Tribunal to prohibit the Appeals Chamber from hearing an appeal that falls outside of its appellate jurisdiction and urge the Appeals Chamber to do so in this case “particularly given that the right of appeal is ‘recognised as a component of the fair trial requirement, which is itself a rule of customary international law’”.¹⁰

4. As justification for the Appeals Chamber exercising its inherent jurisdiction in this instance, Former Assigned Counsel submit that the Tribunal has “[t]he responsibility for resolving any legal uncertainties or outstanding matters in relation to the trial of Slobodan Milošević” and that “if the subject matter of this appeal is not resolved, the precise content of the confidential materials will serve only to continue to perplex the Deceased’s relatives”.¹¹ Further, “[n]on-resolution of this issue may also risk damaging the reputation and independence of the ICTY, particularly in the context of such a historically significant trial of a former head of State”.¹²

5. The Appeals Chamber is not persuaded by the arguments of Former Assigned Counsel that this purported Appeal warrants an exercise of its inherent jurisdiction. The exercise of inherent jurisdiction to protect the integrity of the Tribunal’s proceedings relies on there being some proceedings that warrant that protection. Here, the proceedings against Mr. Milošević were terminated on his death by the Order of the Trial Chamber. Though it is not relevant to the outcome of this case, the Appeals Chamber is not persuaded by the argument of Former Assigned Counsel that a failure to lift confidential measures, put in place to protect the personal integrity of Mr. Milošević, will perplex his relatives or damage the reputation of the Tribunal. The Tribunal has

⁷ Appeal, para. 11.

⁸ *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Orders on the Motion to Withdraw as Counsel Due to Conflict of Interest, 24 June 1999.

⁹ *Ibid.*, p. 2; Appeal, para. 12.

¹⁰ Appeal, para. 14 citing *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/A-1, Judgement, 24 March 2000, para. 113.

¹¹ *Ibid.*, para. 15.

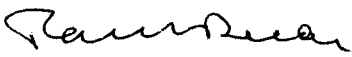
already lifted those measures to the extent necessary to ensure that those charged with investigating the circumstances surrounding the death of Mr. Milošević have full access to all the relevant material.¹³ The Dutch inquest has already been completed and the results made public.¹⁴ The internal inquiry being undertaken by Judge Parker pursuant to Rule 33 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal¹⁵ is still ongoing, but its results will be made public when issued. In addition, the independent auditors of the UNDU, appointed by the Government of Sweden, are still completing their inquiry, which should also be made public. The Appeals Chamber is satisfied that the results of each of these inquiries will provide ample information to the relatives of the deceased Mr. Milošević and will satisfy the public interest surrounding this issue.

6. Because it lacks jurisdiction to consider the Appeal, the Appeals Chamber need not consider the arguments of Former Assigned Counsel concerning their standing to pursue their Motion, nor need it address the merits of the Motion. Upon this basis, the Registry is directed not to accept any further filing from Former Assigned Counsel in relation to this Motion.

7. The Appeal is hereby **DISMISSED**.

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

Done this 12th day of May 2006,
At The Hague,
The Netherlands.


Judge Fausto Pocar
President

[Seal of the International Tribunal]

¹² *Ibid.*

¹³ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Lifting Confidentiality of Relevant Materials for Investigation Purposes, 16 March 2006; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Granting Access to Confidential Material for Purpose of Independent Audit, 7 April 2006.

¹⁴ For results of the report see: <http://www.un.org/icty/pressreal/2006/p1063-om.pdf>.

¹⁵ IT/138/Rev.9, 21 July 2005.

