



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-05-87-PT

Date: 24 May 2006

Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Presiding
Judge Krister Thelin
Judge Frank Höpfel

Registrar: Mr. Hans Holthuis

Decision of: 24 May 2006

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
VLASTIMIR ĐORĐEVIĆ
SRETEN LUKIĆ**

DECISION ON LAZAREVIĆ MOTION FOR ASSIGNMENT OF CO-COUNSEL

Office of the Prosecutor

**Mr. Thomas Hannis
Mr. Chester Stamp
Ms. Christina Moeller
Ms. Patricia Fikirini
Mr. Mathias Marcussen**

Counsel for the Accused

**Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksander Alekšić for Mr. Nebojša Pavković
Mr. Mihajlo Bakrač for Mr. Vladimir Lazarević
Mr. Branko Lukić for Mr. Sreten Lukić**

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 (“Tribunal”) is seised of a “Defence Motion: Requesting Relief in the Assignment of Co-counsel”, filed by Vladimir Lazarević (“Accused”) on 16 May 2006 (“Motion”), and hereby renders its decision thereon.

1. In the Motion, the Accused states that the Registry denied his request for the assignment of Mr. Milan Petrović as co-counsel on grounds that an exception to the language requirement was not warranted in this case due to the fact that Mr. Petrović does not “possess[] unique expertise and skills that are of significant importance for the preparation of the Defence, nor that his professional background complements [the Lead Counsel’s]” and on grounds “that Mr. Petrović does not have previous experience before the Tribunal”.¹ The Registry thus found that the assignment was not in the interests of justice.² The Accused requested the Registry to reconsider its decision, and the Registry denied this request, advising the Accused, according to the Motion, that he “can seek review of [the] decision by the Trial Chamber should [it] consider that it adversely affects the accused’s right to a fair trial”.³ The Accused now “requests that the Trial Chamber allow[] the assignment of Mr. Milan Petrović ... as Co-Counsel”.⁴

2. The Accused argues that Mr. Petrović is already assigned as a legal assistant in the case and has been involved in the case from the Accused’s surrender to the Tribunal.⁵ The Accused also argues that it would have been in the interests of justice for the Registry to assign Mr. Petrović as co-counsel because he generally has represented the Accused in a domestic context and that this prior representation has given rise to a relationship of trust and confidence.⁶

3. The Chamber function’s in relation to the instant Motion is not to review the Registry’s decision refusing to assign Mr. Petrović as co-counsel for the Accused, although the Chamber does have the inherent power and obligation to ensure the Accused’s right to a fair trial under Articles 20 and 21 of the Statute.⁷ At this stage, the appropriate course for the Accused to follow in these

¹ Motion, paras 1–2.

² Motion, para. 2.

³ Motion, para. 4.

⁴ Motion, para. 17.

⁵ Motion, para. 8.

⁶ Motion, paras 9–11.

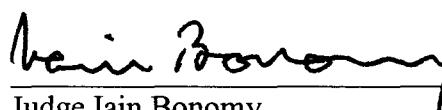
⁷ See *Prosecutor v. Blagojević*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 15 December 2003, para. 7 (holding, in context of Registry’s denial of request by accused to replace his defence team, that “[t]he only inherent power that a Trial Chamber has is to ensure that the trial of an accused is fair; it cannot appropriate for itself a power which is conferred elsewhere”); see also *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Assigned Counsel’s Motion for Withdrawal, 7

circumstances is to seek review of the Registry's decision with the Office of the President pursuant to the procedure outlined in Rule 44(B).⁸ The Trial Chamber therefore will not entertain the Motion.

4. Even assuming that the Chamber were in a position at this point to determine the Motion, the Chamber considers that the assignment of Mr. Petrović as co-counsel is not necessary for the Accused to receive a fair trial, nor does refusal to assign him as co-counsel adversely affect the Accused's right to a fair trial, especially in the circumstances wherein he is still able to offer his services as a legal assistant for the preparation and conduct of the Accused's defence case. Moreover, although the trust and confidence that the Accused has in Mr. Petrović is a factor in the Registry's decision, the Registry's denial of the assignment of a person as co-counsel in which an accused has trust and confidence does not necessarily lead to the conclusion that the accused's right to a fair trial has been adversely affected.

5. Pursuant to Articles 20 and 21 of the Statute and Rule 54 of the Rules of Procedure and Evidence, the Trial Chamber hereby DISMISSES the Motion.

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


Judge Iain Bonomy
Presiding

Dated this twenty-fourth day of May 2006
At The Hague
The Netherlands

[Seal of the Tribunal]

December 2004, para. 10 ("The Trial Chamber understands the Appeals Chamber [in *Blagojević*] to be saying that, unless an application normally falling within the competence of the Registrar goes to the fairness of the trial, a Trial Chamber should not determine the matter."); *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Assigned Counsel Request for Certification of an Interlocutory Appeal Against the Decision on Assigned Counsel Motion for Withdrawal, 17 December 2004 (denying certification of interlocutory appeal).

⁸ See *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision Affirming the Registrar's Denial of Assigned Counsel's Application to Withdraw, 7 February 2005, para. 6 ("While the Trial Chamber presumably retains its inherent power to ensure the fairness of a trial even in this context [*i.e.*, stay of trial pending review of decision on withdrawal], it must allow the process contemplated by Rule 19 [of the Directive on Assignment of Defence Counsel] to run its course before taking up the question (if at all) as an independent judicial matter.").