



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-98-30/1-A
Date: 4 July 2006
Original: ENGLISH

IN THE APPEALS CHAMBER

Before: Judge Fausto Pocar, President
Judge Mohamed Shahabuddeen
Judge Mehmet Güney
Judge Liu Daqun
Judge Wolfgang Schomburg

Registrar: Mr. Hans Holthuis

Decision: 4 July 2006

PROSECUTOR

v.

ZORAN ŽIGIĆ a/k/a "ZIGA"

**DECISION ON COMPLAINT AGAINST DEFENCE COUNSEL
SLOBODAN STOJANOVIĆ**

The Office of the Prosecutor:

Carla Del Ponte

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 (“Tribunal”), is seized of the “Complaint Against Defence Counsel S. Stojanović for a Breach of Rule 44(A) in the Case IT-98-30/1-A”, filed by Zoran Žigić (“Žigić”) on 8 June 2006 (“Motion”).¹

2. In his Motion, Žigić complains that the Appeals Chamber failed to apply Rule 46(A)(ii) of the Rules of Procedure and Evidence (“Rules”) to Counsel representing him on his appeal, Slobodan Stojanović (“Counsel Stojanović”), “although it was obvious that Counsel Stojanović did not meet the requirements from Rules 44 and 45”.² He claims that the Registry failed to inform him that Counsel Stojanović did not meet the requirements of Rule 45 and forced Counsel Stojanović to act as his Defence Counsel on a *pro bono* basis.³ Žigić contends that the mistakes committed by Counsel Stojanović rendered his trial unfair and that he was denied the opportunity to prove to the Appeals Chamber that he was wrongfully convicted because Counsel Stojanović did not prepare his appeal brief in compliance with Rule 108 of the Rules.⁴ He claims that Stojanović “hugely damaged” his case because “all the crucial evidence is contained in the final trial brief, which the Appeals Chamber did not even consider”.⁵ He requests permission to correct these errors by attaching “a final trial brief to [...his] appeal brief so that the Appeals Chamber may thoroughly re-examine its decision”.⁶

3. Žigić has filed his Motion without the benefit of legal assistance and further asks the Appeals Chamber to assign him a lawyer from a Western legal system, should the Appeals Chamber determine that he requires legal assistance.⁷

4. In support of his Motion, Žigić notes that from the beginning of the appeal proceedings in his case, on 8 March 2002, the Pre-Appeal Judge, David Hunt, warned Counsel Stojanović “of his duty to cite individual grounds for each point of appeal” and to include precise references to the Trial Judgement.⁸ He claims that after these warnings, he requested Counsel Stojanović to comply with the Pre-Appeal Judge’s direction and that Counsel Stojanović stated that he had complied with Rule 108.⁹ Žigić says that “the documents attached hereto will show that the final trial brief had

¹ The Motion is dated 23 May 2006, but was filed by the Registry on 8 June 2006.

² Motion, para.18.

³ *Ibid.*, paras. 13, 16.

⁴ *Ibid.*, para. 18, 16.

⁵ *Ibid.*, para. 17.

⁶ *Ibid.*, para. 19.

⁷ *Ibid.*, para.0.

⁸ *Ibid.*, para. 1.

⁹ *Ibid.*

not been prepared in accordance with Rule 108".¹⁰ Attached to the Motion is a letter from the Registry to Counsel Stojanović dated 13 May 2005, in which concerns are raised about the quality of filings in the Žigić case, and a Press Release in Bosnian/Serb/Croat issued by the Tribunal's press office on 28 February 2005, publishing the statement of the Presiding Judge of the Appeals Chamber made in open court on the delivery of the Judgement on Žigić's appeal.¹¹

5. Žigić refers to the following passage of the statement of the Presiding Judge:

In several instances, Žigić has asked the Appeals Chamber to consider his Final Trial Brief as forming part of his Appeal Brief. The Appeals Chamber recalls that an appellant is obliged to provide the Appeals Chamber with exact references to paragraphs in judgements, transcript pages, exhibits or authorities, to which reference is made, so that the Appeals Chamber may fulfil its mandate in an efficient way. General references to the submissions made during trial clearly do not fulfil this requirement and will be disregarded by the Appeals Chamber.¹²

Žigić claims that it is clear from the above that the Appeals Chamber did not consider his Final Trial Brief because Counsel Stojanović failed to prepare it in conformity with Rule 108, as instructed by Judge Hunt.¹³ Žigić argues that his crucial arguments were contained in his Final Trial Brief and the fact that they have not been taken into account by the Appeals Chamber rendered his appeal unfair.¹⁴ He claims further that in the Appeal Judgement the Appeals Chamber made reference in paragraphs 423, 424 and 425 "to a whole series of mistakes made by Counsel Stojanović" and in paragraph 424 made clear that they would disregard his Final Trial Brief as it was not in conformity with Rule 108.¹⁵

6. Žigić also claims that the Appeals Chamber failed to draw his attention to the flaws in his Appeal Brief and instead rendered its Judgement on an incomplete brief. He queries as to why the Appeals Chamber failed to apply Rule 46(A) (ii), which provides:

(A) If a Judge or Chamber finds that the conduct of a counsel is offensive, abusive or otherwise obstructs the proper conduct of the proceedings, or that a counsel is negligent or otherwise fails to meet the standard of professional competence and ethics in the performance of his duties, the Chamber may, after giving counsel due warning:

(ii) determine after giving counsel an opportunity to be heard, that counsel is no longer eligible to represent a suspect or an accused before the Tribunal pursuant to Rule 44 and 45.

¹⁰ *Ibid.*

¹¹ *Ibid.*, para. 5 quoting from Press Release, Appeals Chamber Judgement in the Case *The Prosecutor v Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać*, CT/P.I.S/940, The Hague, 28 February 2005.

¹² *Ibid.*, p. 8.

¹³ Motion., para. 6.

¹⁴ *Ibid.*, para. 8.

¹⁵ *Ibid.*, para. 9.

He argues that the Appeals Chamber should have applied this provision and instructed him to retain a defence counsel capable of preparing a proper Appeal Brief.¹⁶

7. In addition, Žigič reminds the Appeals Chamber that the Registry ceased payment to Counsel Stojanović by a decision issued on 8 July 2002, and the suspension of payment was confirmed by the Appeals Chamber on 10 March 2004.¹⁷ He claims that he was actually without legal representation during his appeal proceedings and his fundamental right to a fair trial as guaranteed by the Statute of the Tribunal was consequently infringed.¹⁸ He states that under pressure from the Registry, Counsel Stojanović agreed to work *pro bono* on his appeal and, faced with the alternative of no legal representation at all, he was forced to accept him as his Counsel. He claims further that the decision of the Appeals Chamber, which endorsed the Registry's cessation of payments to his Counsel, did not mean that he actually had funds of 42,000 Euro available to pay for defence counsel. It was not possible for him to sell his apartment and realise this money as his family was living there.¹⁹

8. Žigič refers to the letter dated 13 May 2005, sent by the Registry of the Tribunal to Counsel Stojanović. He claims that the letter makes it plain that the Registry had been informed about "the mistakes made by Counsel Stojanović" in the course of his appeal. In the letter, he says the Registry states that it does not consider Counsel Stojanović to be qualified to defend an accused at the Tribunal, and that he does not satisfy the conditions of Rule 45. Žigič notes that this assessment was made after his appeal had been completed. He claims that the Registry should have informed him about Counsel Stojanović's lack of necessary qualifications and should not have allowed Counsel Stojanović to represent him on his appeal.²⁰

9. In light of the assessment made by the Registry, Žigič concludes that he was not afforded a fair appeal hearing. He claims that because the Registry invoked the Code of Professional Conduct for Defence Counsel²¹ against Counsel Stojanović, it cannot be argued that it was his choice to have Counsel Stojanović representing him on a *pro bono* basis. Rather, the Registry imposed Counsel Stojanović upon him.²²

¹⁶ *Ibid.*, para. 10.

¹⁷ *Ibid.*, para. 2.

¹⁸ *Ibid.*, para. 3.

¹⁹ *Ibid.*

²⁰ *Ibid.*, paras 11-12.

²¹ Code of Professional Conduct for Defence Counsel Appearing Before the International Tribunal (IT/125/Rev.1), 12 July 2002.

²² Motion, paras 13-15.

Analysis

10. As noted in the Appeal Judgement, Žigić's Appeal Brief, filed on 21 May 2002, failed to identify any grounds of appeal. To remedy this failing, on 14 June 2002, the Pre-Appeal Judge ordered Žigić to identify his grounds of appeal.²³ A consolidated list of grounds was filed on 3 July 2002.²⁴ By filing this list referencing which grounds pertained to arguments contained in the Appeal Brief and identifying the parts of the Trial Judgement impugned, Counsel Stojanović complied with the requirements of the Practice Direction on Formal Requirements for Appeal from Judgement²⁵ to the satisfaction of the Pre-Appeal Judge. If he had failed to do so, he would have been again ordered by the Pre-Appeal Judge to comply with the requirements of that Practice Direction.

11. While Žigić refers to a failure of his Counsel to comply with the requirements of Rule 108, at the time he filed his Notice of Appeal, the Rules did not require an appellant to identify his grounds of appeal until the filing of the Appeal Brief. It was only later that Rule 108 was amended to require an appellant to identify his grounds of appeal earlier in his notice of appeal. As such, the obligation of Counsel Stojanović was to comply with the Practice Direction and identify the grounds of appeal in the Appeal Brief, and it was this failure that was remedied by his compliance with the order of the Pre-Appeal Judge.²⁶ Accordingly, Žigić's argument that his appeal was unfair because Counsel Stojanović failed to conform to the requirements of Rule 108 is without merit.

12. The Appeal Chamber also noted in the Appeal Judgement that in his Appeal Brief, Žigić asked it to consider his Final Trial Brief as part of his Appeal Brief. In response to this request, the Appeals Chamber recalled the obligation of an appellant to clearly set out his grounds of appeal and the arguments in support thereto, and stated that as general references to submissions made at trial do not fulfil this condition, they will be disregarded by the Appeals Chamber.²⁷

13. In claiming that his appeal was rendered unfair by the failure of the Appeals Chamber to take into account his Final Trial Brief, Žigić exhibits a fundamental misunderstanding of the appeals process. An appeal hearing is not a trial *de novo* but a forum in which an appellant can argue that the Trial Chamber erred in fact or law in reaching the decision that it reached. In this respect, to allow the Appeals Chamber to consider that allegation of error on the part of the Trial

²³ Decision on Prosecution Motion Requesting Order to Zoran Žigić to File Grounds of Appeal, 14 June 2004, ("Order").

²⁴ Submission Pursuant to Order Given in Decision on Prosecution Motion Requesting Order to Zoran Žigić to File Grounds of Appeal Issued on 14 June 2002, 3 July 2002; *Prosecutor v Miroslav Kvočka, Mlađo Radić, Zoran Žigić, Dragoljub Prcać*, Case No. IT-98-30/1-A, Appeal Judgement, 28 February 2005 ("Appeal Judgement"), para. 423.

²⁵ IT/201, 7 March 2002 ("Practice Direction"), para. 4 (B).

²⁶ Order, para. 2.

Chamber, the appellant must necessarily identify that error and explain how the Trial Chamber erred. The Appeals Chamber cannot be expected to be able to trawl through an appellant's final trial brief and identify, by reference to that brief, what in the Trial Judgement the appellant disputes. This is the purpose of a notice of appeal and of the appeal brief.

14. In Žigič's Appeal Brief, the request that the Final Trial Brief be made part of the Appeal Brief was primarily related to the general complaint of Žigič, addressed by the Appeals Chamber,²⁸ that the Trial Chamber did not give due regard to the evidence adduced by the defence at trial. The allegation was that the Trial Chamber ignored 75% of the evidence and, as a consequence of this omission, the Defence was "forced to repeat all it previously stated, particularly what was mentioned in Final Trial Brief".²⁹ However, to merely repeat all the arguments in the Final Trial Brief would not have advanced Žigič's case on appeal. What his Counsel was required to do, and what he in fact did do in the list of grounds of appeal and the Appeal Brief, was to identify those factual findings of the Trial Chamber that were disputed and demonstrate why he alleged that the Trial Chamber erred in making those factual findings. Accordingly, Žigič's argument that he was denied a fair appeal because the Appeals Chamber did not also consider his Final Trial Brief is without merit.

15. Having established that Counsel Stojanović did comply with the Rules and Practice Direction for the filing of appeals before this Tribunal, and that Žigič's appeal was not compromised by the failure of the Appeals Chamber to consider his Final Trial Brief in addition to his Appeal Brief, there was no basis for the Appeals Chamber to have invoked Rule 46(A)(ii) against Counsel Stojanović. Accordingly, Žigič's claim that it should have done so is also without merit.

16. With respect to Žigič's complaint that Counsel Stojanović was not qualified to represent him on his appeal because the Registry has since determined that he does not meet the requirements of Rule 44 of the Rules, it suffices to say that at the time Counsel Stojanović was appointed to represent Žigič, he was on the Rule 45 list of Counsel eligible to be appointed as Defence Counsel at the Tribunal. He was selected by Žigič as his Counsel of choice from that list. Accordingly, Žigič's claim that the Registry failed to advise him that he was not qualified is without merit, as he was qualified according to the standards then in effect. Subsequently, in July 2004, the Directive on the Assignment of Defence Counsel³⁰ and Rule 44 of the Rules were amended, setting more stringent qualification requirements for Counsel on the Rule 45 list. All Counsel then on the list were requested to satisfy the Registry that they met those more stringent requirements by

²⁷ Appeals Judgement., paras. 424-425.

²⁸ *Ibid.*, paras. 21-25.

²⁹ Appellant's Brief of Argument – Defence for the accused Zoran Žigič, 21 May 2002.

reapplying for admission. The letter of the Registry was made in response to Counsel Stojanović's application for readmission submitted on 25 March 2005.

17. Further, the letter of the Registry relied upon by Žigić does not establish that Counsel Stojanović is unqualified to be admitted to the Rule 45 list of Counsel. In that letter, the Registry noted that the Pre-Appeal Judge had criticised the Appeal Brief in the course of a decision ordering Counsel Stojanović's to identify the grounds of appeal therein, and also made reference to comments made by the Appeals Chamber in a decision on Review of the Registrar's Decision concerning withdrawal of legal aid.³¹ The Registry stated that these comments caused it to have concerns about Counsel Stojanović's professional competence and that it would not process his "application for admission as a matter of form at this stage".³² The Registry invited Counsel Stojanović to attend an interview, as provided for in Article 15(B) of the Directive on the Assignment of Defence Counsel, to discuss the Registry's concerns. It referred to Counsel Stojanović's indication during a telephone conversation with Mr. Petrov in the Registry that he did not wish to attend such an interview and stated that if that remained his position, his application would be denied.³³ Consequently, there was no determination of actual incompetence of Counsel Stojanović warranting refusal of inclusion on the Rule 45 list of Counsel made by the Registry, but an indication of concern and an invitation to address that concern, with failure to do so resulting in non-admission to the list. Nor has Žigić established that Counsel Stojanović's actually was incompetent, or that he made any mistakes in his representation and deprived Žigić of adequate assistance of counsel.

18. Žigić's allegation that the Registry forced Counsel Stojanović to continue to represent him on a *pro bono* basis following its withdrawal of legal funds is also without merit. The simple fact of the matter is that in light of evidence that Žigić had become significantly wealthier during the time since the initial appointment of Counsel, the Registrar's decision to withdraw legal aid was based on the fact that Žigić now had sufficient funds to pay Defence Counsel costs for the remainder of his appeal.³⁴ This decision was confirmed by the Appeals Chamber.³⁵ Also, on 10 July 2002, Žigić sought approval from the Registry for Counsel Stojanović to continue to represent him on a *pro bono* basis.³⁶ In these circumstances, Žigić cannot allege that the Registry forced Counsel Stojanović to continue to represent him *pro bono*. Rather, Žigić was assessed to be in possession of

³⁰ IT/73/Rev.10, 28 July 2004.

³¹ Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, see para. 88

³² Letter, 13 May 2005.

³³ *Ibid.*

³⁴ Decision, 8 July 2002 ("Registrar's Decision").

³⁵ Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003.

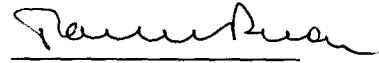
³⁶ Letter of Žigić, dated 10 July 2002 addressed to the Registrar.

sufficient financial means to pay the legal costs of his Defence Counsel. He could have chosen to use his own money to hire counsel of his own choosing. He did not do so.

19. On the basis of the above, Žigič's Motion is **DISMISSED**.

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

Done this 4th day of July 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]