



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-04-79-PT  
Date: 14 June 2007  
Original: English

25-04-79-PT  
D15073 - D15079  
14 JUNE 2007

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**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Christine Van Den Wyngaert  
Judge Krister Thelin

**Registrar:** Mr. Hans Holthuis

**Decision of:** 14 June 2007

**PROSECUTOR**

v.

**MIĆO STANIŠIĆ**

***PUBLIC***

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**DECISION ON DEFENCE MOTION FOR CERTIFICATION**

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**The Office of the Prosecutor:**

Mr Alan Tieger  
Ms Anna Richterova

**Counsel for the Accused:**

Mr Stevo Bezbradica

1. This Trial Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia since 1991 (“Tribunal”) is seized of “Defence’s Request for Certification of Appeal Pursuant to Rule 73(B)” (“Motion”) filed on 1 May 2007 by Stevo Bezbradica, Counsel for Mićo Stanišić (“Accused”).

2. The Motion seeks leave from the Trial Chamber to grant certification pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) to appeal from the “Decision on Review of Registrar’s Decision re Co-Counsel for Mićo Stanišić” of 24 April 2007 (“April 2007 Decision”). The Motion was filed within 7 days of the filing of the April 2007 Decision and thus in due time, pursuant to Rule 73(C). In the April 2007 Decision the Trial Chamber dismissed the “Defence Counsel’s Motion for Review of the Registrar’s Refusal to Assign Mr. Slobodan Cvijetić as Co-Counsel”, filed on 18 August 2006, in which the Accused requested that the Trial Chamber quash a decision in a letter of 11 August 2006 from the Head of the Office of Legal Aid and Detention Matters (OLAD) and assign Mr. Slobodan Cvijetić as co-counsel.<sup>1</sup>

3. In the Motion the Accused submitted that:

(a) The Trial Chamber failed to safeguard the rights of the Accused as set forth in Articles 20(1), 21(2) and 21(4) of the Statute of the Tribunal (“Statute”)<sup>2</sup> and to consider the preference of the Accused in regard to the assignment of co-counsel;<sup>3</sup>

(b) There is a “*de facto* inconsistency” between the April 2007 Decision and the “Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletić” of 20 February 2007<sup>4</sup> (“*Popović* Decision”);<sup>5</sup>

(c) The April 2007 Decision would affect the expeditious conduct of proceedings on the grounds that Mr. Cvijetić is the only person who could be appointed as co-counsel to the Accused<sup>6</sup> and it would be very difficult for anyone else to commence as co-counsel at this stage of the proceedings;<sup>7</sup>

<sup>1</sup> Defence Counsel’s Motion for Review of the Registrar’s Refusal to Assign Mr. Slobodan Cvijetić as Co-Counsel, 18 August 2006, para. 12.

<sup>2</sup> Motion, para. 11.

<sup>3</sup> Motion, para. 12.

<sup>4</sup> *Prosecutor v. Vujadin Popović et al.*, Case No.: IT-05-88-T, Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletić, confidential, 20 February 2007. The confidentiality of the *Popović* Decision was lifted on 23 February 2007. See *Prosecutor v. Vujadin Popović et al.*, Case No.: IT-05-88-T, Order to Lift Confidentiality, 23 February 2007.

<sup>5</sup> Motion, para. 12.

<sup>6</sup> Motion, para. 13.

<sup>7</sup> Motion, para. 14.

(d) The April 2007 Decision would affect the outcome of the trial since the assignment of Mr. Cvijetić “would contribute to a saving of time and resources and “in that sense the proceedings would be made more rational”;<sup>8</sup> and

(e) An immediate resolution by the Appeals Chamber may materially advance the proceedings by clarifying an important legal and procedural issue and by ensuring that any infringement of the right of the Accused to a fair trial that may have occurred is properly remedied so as to limit any prejudicial consequences.<sup>9</sup>

4. Pursuant to Rule 73(B), decisions on motions are “without interlocutory appeal save with certification by the Trial Chamber”. The Chamber may nevertheless exercise its discretion to grant certification “if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”.<sup>10</sup>

5. The Chamber is of the view that the assignment of Mr. Cvijetić as co-counsel would not significantly affect the fair and expeditious conduct of proceedings. It is well-established in the jurisprudence of the Tribunal that the assignment of co-counsel is not a matter primarily involving the legal right of the Accused to be represented by counsel of his own choosing.<sup>11</sup> With regard to the expeditiousness of proceedings, any benefits that may be derived from Mr. Cvijetić’s knowledge of the case should be weighed against his lack of proficiency in either of the working languages of the Tribunal.<sup>12</sup> The alleged “*de facto* inconsistency” between the April 2007 Decision and the *Popović* Decision does not raise any issue that would significantly affect the fair and expeditious conduct of proceedings, because the *Popović* Decision concerned a decision on the assignment of co-counsel in materially different circumstances, in particular at a different stage of the proceedings.

6. In the view of the Trial Chamber, the issue of the validity of the decision of the Head of the OLAD to deny the Accused’s Request for assignment of Mr. Slobodan Cvijetić as co-counsel

<sup>8</sup> Motion, para. 16.

<sup>9</sup> Motion, para. 18.

<sup>10</sup> Rule 73(B).

<sup>11</sup> April 2007 Decision, paras. 9-12. See *Prosecutor v Vidoje Blagojević*, Case No.: IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003, paras 21 and 22; *Prosecutor v Veselin Šljivančanin*, Case No.: IT-95-13/1-PT, Decision on Assignment of Defence Counsel, 20 August 2003, paras 19-20; *Prosecutor v Milan Martić*, Case No.: IT-95-11-PT, Decision on Appeal against Decision of Registry, 2 August 2002, pp 5-6; *Croissant v Germany*, EUR.CT.H.R. Judgement, 25 September 1992, Series A No. 237-B, para. 29.

<sup>12</sup> April 2007 Decision, para. 14.

would not significantly affect the outcome of the trial, because the trial has not yet started and the Accused already has a substantial level of legal assistance.

7. The assignment of Mr. Cvijetić is not an issue for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. The question currently before the Trial Chamber is not whether the Accused may raise this matter on appeal at all, but rather whether the Accused should appeal at this stage of the proceedings.<sup>13</sup> The most significant issue which the April 2007 Decision involves is whether the refusal to assign Mr. Cvijetić as co-counsel infringes the right of the Accused to a fair trial and, in particular, to the choice of counsel. This question can best be answered at the conclusion of the case in light of the legal assistance given to the Accused throughout the totality of the proceedings, in particular at the trial stage. Moreover, because the Accused has lead counsel and Mr. Cvijetić is already engaged as a legal consultant to assist lead counsel, the essential issue is whether Mr. Cvijetić will assist lead counsel in the capacity of co-counsel or someone other than Mr. Cvijetić will be assigned as co-counsel. Therefore, although early assignment of a co-counsel may be desirable, the Trial Chamber does not consider that an immediate resolution of the question of the assignment of Mr. Cvijetić as co-counsel would significantly affect the legal assistance available to the Accused particularly in view of the stage reached in the proceedings. Accordingly the resolution of this issue would not materially advance the proceedings.

8. For these reasons the Trial Chamber is not persuaded that the issue put to it by the Accused is one that would significantly affect the conduct of the proceedings or the outcome of the trial. Nor is the Chamber of the opinion that an immediate resolution by the Appeals Chamber may materially advance the proceedings.

The Chamber therefore **DENIES** the Motion.

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<sup>13</sup> See *Prosecutor v. Pavle Strugar*, Case No.: IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 6.

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



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**Kevin Parker**  
**Presiding Judge**

Dated this fourteenth day of June 2007,  
At The Hague,  
The Netherlands

[Seal of the Tribunal]