



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-95-5/18-PT

Date: 20 April 2009

Original: English

IN THE TRIAL CHAMBER

Before: Judge Iain Bonomy, Presiding
Judge Christoph Flüge
Judge Michèle Picard

Acting Registry: Mr. John Hocking

Decision of: 20 April 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**DECISION ON ACCUSED REQUEST FOR JUDICIAL REVIEW
OF THE REGISTRY DECISION ON THE ASSIGNMENT OF
MR. MARKO SLADOJEVIĆ AS LEGAL ASSOCIATE**

Office of the Prosecutor

Mr. Alan Tieger
Mr. Mark B. Harmon
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

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 the Accused’s “Request for Judicial Review of the Registry Decision on the Assignment of Mr. Marko Sladojević as Legal Associate”, filed on 24 March 2009 (“Request”), and hereby renders its decision thereon.

I. Background and Submissions

1. On 4 February 2009, the Registry of the Tribunal denied a request submitted by the Accused for the assignment of Mr. Marko Sladojević as a legal associate in his defence team (“Decision on assignment”) on the basis that Mr. Sladojević was already assigned as a legal associate in the defence team of Mr. Momčilo Krajišnik . The Accused then sought reconsideration of that denial, which was also denied by the Registry on 3 March 2009 (“Decision on reconsideration”).

2. In his Request, the Accused asks the Trial Chamber to quash the Decision on reconsideration and the Decision on assignment, as well as to order that the Registry assign Mr. Sladojević as his legal associate with immediate effect.¹ The Accused argues, firstly, that the Registry unreasonably denied the appointment of Mr. Sladojević in breach of the relevant legal authorities, and that, when the *Krajišnik* Appeals Chamber delivered its final judgement on 17 March 2009, it rendered the possibility of Mr. Krajišnik’s rights not being fully protected non-existent.²

3. Secondly, the Accused submits that the Registry did not take into account other relevant information, including that Mr. Sladojević is the only person supposed to help the Accused prepare for trial factually³ and that his familiarity with the factual and legal issues of the case would save time and resources.⁴

4. The Accused’s third submission is that the conclusion of the Registry is unreasonable and he argues that the Registry applies a stricter conflict of interest test to support staff than to counsel.⁵ The Accused also recalls that Mr. Sladojević worked for the defence team of Milan Gvero in the

¹ Request, para. 30.

² Request, para. 15.

³ Request, para. 17.

⁴ Request, para. 18–22.

⁵ Request, paras. 23–24.

case of *Popović et al.* where Mr. Krajišnik was called to testify.⁶ Furthermore, with regard to the Registry's concern about the absence of lead counsel and his control over the support staff in cases of self-represented accused, the Accused points out that in practice legal support staff visit and work with their clients without their lead counsel supervising the visit.⁷

5. A Registry Submission Regarding the Denial of Assignment of Marko Sladojević was filed on 27 March 2009 ("Submission") upon the invitation of the Chamber. The concerns of the Registry focus on the probability that Mr. Sladojević could face conflicting loyalties between Mr. Krajišnik and the Accused and that he may find himself unable to effectively undertake his duties as legal associate "as there may be confidential information in the *Krajišnik* case of which he may be aware, that may be advantageous to the Accused and harmful to Mr. Krajišnik if the Accused was aware of this information".⁸ Furthermore, the Registry submits that the end of the *Krajišnik* case with the issuance of the Appeals judgement does not relieve a legal associate assigned to that case from all responsibilities regarding confidentiality and general loyalty towards the case, which could potentially be reopened in future review proceedings.⁹

6. The Registry further submits that, in the final assessment, it observed the basic principles of natural justice and procedural fairness and considered all relevant information.¹⁰ Moreover, the Registry disagrees that it applied a more stringent conflict of interest standard to Mr. Sladojević and points out that, in the case of represented accused, lead counsel takes responsibility for ensuring that confidentiality is respected, whereas in the case of self-represented accused, there is no regulatory mechanism through accountability of counsel.¹¹

7. In a proposed Reply to Registry Submission Regarding the Denial of Assignment of Marko Sladojević, filed on 3 April 2009 ("Reply"), the Accused seeks leave to reply to the Submission,¹² and submits that the Registry did not take into consideration that the tasks envisaged for Mr. Sladojević within the Accused's defence team concern the factual issues of the case, and that this kind of work could not involve using confidential information that may have been obtained from Mr. Krajišnik.¹³ The Accused further submits that, even in cases of self-represented accused, the

⁶ Request, Annex F.

⁷ Request, para. 25.

⁸ Submission, para. 8.

⁹ Submission, para. 13.

¹⁰ Submission, paras. 15–16.

¹¹ Submission, paras. 11–12.

¹² Reply, para. 1.

¹³ Reply, para. 5.

Tribunal has effective mechanisms for protection of confidential information.¹⁴ Moreover, the Accused argues that the denial of Mr. Sladojević's appointment because of potential review proceedings was unreasonable, given that this procedure is extremely rare at the Tribunal and that, even if the *Krajišnik* case was reopened, Mr. Sladojević could then withdraw from the case.¹⁵

II. Applicable law

8. It is established that a Trial Chamber may intervene in a matter that is within the primary competence of the Registry where that matter goes to the fairness of the trial.¹⁶

9. In *Prosecutor v. Kvočka et al.*, the Appeals Chamber set out the standard, deriving from "general principles of law", for review by a Trial Chamber of a decision of the Registry:

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal ... A judicial review of an administrative decision made by the Registrar in relation to legal aid is concerned initially with the propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it.¹⁷

10. According to this standard, an administrative decision will be quashed if the Registry, in making the decision:

- (a) has failed to comply with the requirements of the relevant legal authorities; or
- (b) has failed to observe the basic rules of natural justice and procedural fairness towards the person affected by the decision; or
- (c) has taken into account irrelevant material or failed to take into account relevant material; or
- (d) has reached a conclusion that is unreasonable, in the sense that it is a conclusion which no sensible person who has properly applied his mind to the issue could have reached.¹⁸

¹⁴ Reply, para. 7.

¹⁵ Reply, para. 8.

¹⁶ *Prosecutor v. Delalić et al.*, Order on Esad Landžo's Motion for Expedited Consideration, Case No. IT-96-21-A, 15 September 1999, cited by the Appeals Chamber in *Prosecutor v. Blagojević*, Public and Redacted Reason for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, Case No. IT-02-60-AR73.4, 7 November 2004; see also *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Order Concerning Court-Assigned Counsel's Terms of Engagement, 8 April 2005, p. 4.

¹⁷ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigic", 7 February 2003 ("*Kvočka et al.* Appeal Decision"), para. 13.

¹⁸ *Kvočka et al.* Appeal Decision, para. 13.

11. The Appeals Chamber found that “in the absence of established unreasonableness there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled”,¹⁹ and that the accused bears the onus of persuading the Trial Chamber conducting the review both “(a) that an error of the nature described has occurred, and (b) that such error has significantly affected the Registrar’s decision to his detriment”.²⁰

III. Discussion

12. The Chamber notes that, under the Rules, the Accused does not have a right to reply to a submission made by the Registry pursuant to Rule 33(B) upon the invitation of the Trial Chamber. However, the Chamber considers that, in the present circumstances, a reply is warranted and the Chamber will, therefore, grant leave to reply.

13. With regard to the Accused’s claim that the Registry has failed to comply with the requirements of the relevant legal authorities, the Trial Chamber notes that he refers only to the Chamber’s own Decision on adequate facilities, in which the Chamber encouraged the Accused and the Registry “to engage urgently in further discussion to ensure that the support that can be provided is made available as soon as possible”.²¹ However, the Chamber does not consider this passage as requiring any specific action by the Registry on this issue and, consequently, is not satisfied that the Registry failed to comply with the requirements of the relevant legal authorities.

14. The Trial Chamber is satisfied that the Registry did not fail to take into account relevant material and that, in its Decisions on assignment and on reconsideration, the Registry considered the material facts relevant to these decisions.

15. With regard to whether the decisions of the Registry were unreasonable, the Chamber notes that the Registry made its Decisions on assignment and on reconsideration on the basis that, in the case of a self-represented accused, there is no lead counsel who can take responsibility for ensuring that support staff previously engaged in another defence team maintain their duty of loyalty. However, the Chamber does not consider that, in this case, the absence of lead counsel exercising control over legal support staff is decisive. Adequate mechanisms for the protection of confidential information are available, including the obligation of the Accused and his legal associates to observe and protect the confidentiality of information and the Tribunal’s power to launch contempt

¹⁹ *Kvočka et al.* Appeal Decision, para. 13.

²⁰ *Kvočka et al.* Appeal Decision, para. 14.

²¹ Decision on Accused Motion for Adequate Facilities and Equality of Arms: Legal Associates, 28 January 2009, para. 37.

proceedings when confidentiality is breached. Thus, the Chamber finds that the distinction between the case of a represented and an unrepresented accused is not a relevant consideration in the present circumstances.

16. The Chamber notes that both the Accused and Mr. Krajišnik, knowing that Mr. Sladojević might face a conflict of interest if he were assigned as a legal associate to the Accused, nevertheless take that risk.

17. The Chamber further notes that the Registry did not raise any objections to the assignment of Mr. Sladojević to the defence team of Milan Gvero in the case of *Popović et al.* despite his existing assignment as a legal associate of Mr. Krajišnik. Moreover, Mr. Krajišnik was a potential witness and eventually testified in the *Popović et al.* case. In the light of the foregoing, the Chamber considers that there is no reason why the Registry should have come to a different conclusion with regard to the assignment of Mr. Sladojević as a legal associate of the Accused, particularly as the trial and appeal phases of the *Krajišnik* case are now complete and the possibility of review proceedings is remote.

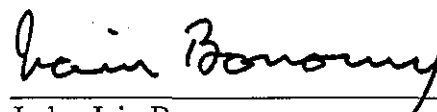
18. Consequently, the Chamber finds that the Registry's denial of assignment of Mr. Sladojević is, in all the circumstances, unreasonable.

IV. Disposition

19. Accordingly, the Trial Chamber, pursuant to Rules 54 and 126 *bis* of the Rules, hereby

- (a) **GRANTS** leave for the Reply;
- (b) **GRANTS** the Request; and
- (c) **ORDERS** the Registry to assign Mr. Sladojević as legal associate for the Accused with immediate effect.

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



Judge Iain Bonomy
Presiding

Dated this twentieth day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]