

**UNITED
NATIONS**



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-04-74-A
Date: 7 May 2015
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Alphons Orie, Acting President

Registrar: Mr John Hocking

Decision of: 7 May 2015

PROSECUTOR

v.

**JADRANKO PRLIĆ
BRUNO STOJIC
SLOBODAN PRALJAK
MILIVOJ PETKOVIĆ
VALENTIN ĆORIĆ
BERISLAV PUŠIĆ**

PUBLIC REDACTED VERSION

**DECISION ON URGENT REQUEST FOR REVIEW
OF THE REGISTRY'S DECISION OF 2 APRIL 2015 AND FOR
A DECISION ON THE APPELLANT'S REQUEST OF 15
JANUARY 2015**

Counsel for Milivoj Petković

Ms Vesna Alaburić

Mr Guénaél Mettraux

I. PROCEDURAL HISTORY

1. On 17 April 2015, co-counsel for Mr Milivoj Petković (“Applicant”) filed, before the President of the Tribunal, an urgent request for review of a Registrar decision of 2 April 2015 (“Request” and “Impugned Decision”, respectively), which had denied him standing to seek his withdrawal as counsel for Mr Petković.¹ On 20 April 2015, the President, pursuant to Rule 15 (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”), withdrew from considering the Request and assigned it to the Vice-President.² On 22 April 2015, the Vice-President, as well as the two subsequent most senior permanent Judges of the Tribunal, pursuant to Rule 15 (A) of the Rules, withdrew from considering the Request and assigned it to me.³ On 28 April 2015, lead counsel for Mr Petković filed a submission (“Lead Counsel Submission”).⁴ On 30 April 2015, the Registry filed a submission in response to the Request.⁵ On 1 May 2015, the Applicant filed a submission in response to the Lead Counsel Submission making further requests (“First Additional Submission”).⁶ On 4 May 2015, the Applicant filed another submission, responding to the Registrar’s 30 April submission (“Second Additional Submission”).⁷

II. SUBMISSIONS

2. The Applicant submits that [REDACTED].⁸ On 15 January 2015, the Applicant submitted a request for withdrawal to the Registrar (“15 January Request”).⁹ On 28 January 2015, lead counsel independently requested co-counsel’s withdrawal (“28 January Request”).¹⁰ On 16 March 2015, the Registrar denied the 28 January Request, noting that in a further communication from lead counsel the 28 January Request had effectively been withdrawn.¹¹ On 2 April 2015, the Registrar denied the 15 January Request arguing that the Applicant, as co-counsel, does not have standing to request his own withdrawal.¹² The Applicant submits that the Registrar erroneously relied only on Article 20

¹ Urgent Request for Review of the Registry’s Decision of 2 April 2015 and for a Decision on the Appellant’s Request of 15 January 2015, 17 April 2015 (Confidential and *ex parte*).

² Order Assigning a Request to a Judge, 20 April 2015 (Confidential and *ex parte*).

³ Order Assigning a Request to a Judge, 22 April 2015 (Confidential and *ex parte*).

⁴ Response to Mr Guenaël Mettraux’s “Urgent Request for Review of the Registry’s Decision of 2 April 2015 and for a Decision on Appellants Request of 15 January 2015” of 17 April 2015 [sic], 28 April 2015 (Confidential and *ex parte*).

⁵ Registrar’s Submission Regarding Co-Counsel for Milivoj Petković’s Request for Review of the Registry’s Decision of 2 April 2015, 30 April 2015 (Confidential and *ex parte*) (“Registry Submission”).

⁶ Submission on “Response” Filed by Lead Counsel for Milivoj Petković on 27 April 2015, 1 May 2015 (Confidential and *ex parte*).

⁷ Response to “Registrar’s Submission Regarding Co-Counsel for Milivoj Petković’s Request for Review of the Registry’s Decision of 2 April 2015”, 4 May 2015 (Confidential and *ex parte*).

⁸ Request, paras 4, 26-28, 34-36, 50, Annex A.

⁹ Request, para. 5, Annex A.

¹⁰ Request, para. 6, Annex B.

¹¹ Request, paras 8-9, Annex C.

¹² Request, para. 9, Annex D.

(A) (ii) of the Directive on the Assignment of Defence Counsel (“Directive”) without taking into account [REDACTED].¹³ The Applicant contends that not allowing standing for co-counsel to seek his own withdrawal would lead to the absurd situation that he could not withdraw even if [REDACTED].¹⁴ Pending a resolution of the Applicant’s efforts to withdraw, [REDACTED].¹⁵ On a separate note, the Applicant submits that lead counsel has refused to pay one of the legal assistants on the defence team.¹⁶ The Applicant contends that he has repeatedly approached the Registry about this matter without receiving any response.¹⁷ In sum, the Applicant requests me to (i) quash the Impugned Decision; (ii) find that he has standing to seek his own withdrawal as co-counsel; (iii) decide that he can withdraw as co-counsel instead of remanding the matter back to the Registrar; (iv) order the Registrar, as an interim measure, to suspend the Applicant’s appointment until the Request is decided on the merits; and (v) order the Registrar to pay the legal assistant in the defence team referred to above or, in the alternative, order the Registrar to render a reasoned decision in this matter.¹⁸

3. The Registrar submits that the Directive is unambiguous and was applied correctly.¹⁹ The Registrar states that any request to withdraw co-counsel must be made by lead counsel pursuant to Article 20(A) of the Directive.²⁰ The 15 January Request was not made by lead counsel and the Registrar correctly determined that co-counsel did not have standing to seek his own withdrawal.²¹ The Registrar further submits that the Applicant’s submissions relating to his lack of response regarding the payment of one of the defence’s legal assistants are inaccurate.²² The Registrar submits that he responded to the Applicant’s correspondence but did not receive a formal request for payment.²³

4. Lead counsel for Mr Petković [REDACTED] but does not make submissions on whether the Applicant has standing to request his own withdrawal.²⁴

5. In response to the Lead Counsel Submission, the Applicant submits that lead counsel does not have standing in the matter and that her submission should be struck from the record.²⁵ The Applicant further submits that [REDACTED].²⁶

¹³ Request, paras 18-19, 21, 25, 32.

¹⁴ Request, para. 20.

¹⁵ Request, paras 26, 30, 34, 36, 38-39, 43, Annex A.

¹⁶ Request, para. 54.

¹⁷ Request, para. 55.

¹⁸ Request, paras 22-23, 58.

¹⁹ Registry Submission, paras 2-3, 5-6, 13.

²⁰ Registry Submission, paras 3, 6.

²¹ Registry Submission, para. 4.

²² Registry Submission, paras 2, 9.

²³ Registry Submission, paras 9-11.

²⁴ See Lead Counsel Submission.

6. In response to the Registrar's 30 April submission, the Applicant submits that he has now seised the Registrar with a request for payment for one of the defence's legal assistants.²⁷ The Applicant asks me to stay my decision on this issue until the Registrar has issued his decision.²⁸

III. APPLICABLE LAW

7. The following standard has been set for the review of administrative decisions made by the Registrar:

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeals, or in any way similar to the review which a Chamber may undertake of its own judgment in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar [...] 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.²⁹

Accordingly, an administrative decision may be quashed if the Registrar:

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonable" test).³⁰

8. Article 20 of the Directive states as follows:

- (A) In the interests of justice, the Registrar may:
 - (i) at the request of the accused, or his counsel, withdraw the assignment of counsel;
 - (ii) at the request of lead counsel, withdraw the assignment of co-counsel.

9. Article 2 of the Directive defines 'Counsel' as 'a person representing or eligible to represent a suspect or accused pursuant to Rules 44, 45 and 45 *bis* of the Rules'.

IV. DISCUSSION

10. At the outset, I note that the Applicant does not limit his request to my review of the Impugned Decision but additionally requests that I do not remand the matter back to the Registrar if the conditions for quashing the Impugned Decision are met, and decide myself whether he can in

²⁵ First Additional Submission, paras 4, 25.

²⁶ First Additional Submission, paras 7, 9, 25.

²⁷ Second Additional Submission, para. 14.

²⁸ Second Additional Submission, para. 15.

²⁹ *Prosecutor v. Miroslav Kvočka et al.*, Case no. IT-98-30/1-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, para. 13.

fact withdraw as co-counsel. In this situation, namely where the interests of justice require a thorough analysis of whether co-counsel's request for withdrawal should be granted, submissions by lead counsel are of significant importance in view of the impact a withdrawal may have on the proceedings and more specifically on the position of Mr Petković. Accordingly, I find there to be no merit in the submission that lead counsel does not have standing in the matter. As for any [REDACTED].

11. Once counsel is assigned by the Registrar, s/he is generally expected to remain on the case. If counsel could withdraw without seeking leave, this could have very negative consequences for the proceedings. The Registrar will only grant a request to withdraw if the interests of justice so require.³¹ This test requires a careful balancing of all interests involved, including any possible disruptions to the proceedings, the reasons for counsel's request to withdraw, and the position of the client vis-à-vis the requested withdrawal. [REDACTED].

12. Article 20 of the Directive sets out at whose request a withdrawal of counsel may be granted by the Registrar. Article 20 (A) (i) of the Directive stipulates that the accused or counsel may request the withdrawal of counsel. 'Counsel' is defined in the Directive as encompassing both lead and co-counsel. Article 20 (A) (ii) of the Directive clarifies that lead counsel can seek the withdrawal of co-counsel. I do not find the Registrar's conclusion that co-counsel 'must' be withdrawn upon request of lead counsel to be compelling. In my view, Article 20 (A) (i) allows for co-counsel to seek his own withdrawal. Article 20 (A) (ii) merely clarifies Article 20 (A) (i) by making explicit that Article 20 (A) (i) cannot be interpreted as broad as suggesting that co-counsel could seek the withdrawal of lead counsel.³² There is no reference in the Impugned Decision to Article 20 (A) (i) of the Directive. I am of the view, that the Registrar should have analysed whether the 15 January Request could be covered by Article 20 (A) (i) of the Directive. I note in this respect that should the Registrar's interpretation of Directive, as seen in Impugned Decision, be followed in future decisions, it could result in [REDACTED]. Under those circumstances, a co-counsel would be barred from seeking his own withdrawal if his lead counsel did not support it, for example in a situation where [REDACTED]. Not giving a co-counsel standing to seek his own withdrawal makes the Registrar's withdrawal decision conditional on the lead counsel's approval. Accordingly, I find that the Registrar failed to comply with legal requirements by not considering Article 20 (A) (i) of the Directive. I will therefore quash the Impugned Decision.

³⁰ *Prosecutor v. Radovan Karadžić*, Case no. IT-95-5/18-T, Decision on Request for Review of Decision on Defence Team Funding, 31 January 2012, para. 6.

³¹ See Article 20 of the Directive; [REDACTED].

³² This reading is consistent with the hierarchy between lead counsel and co-counsel as clearly set out in Article 16 of the Directive.

13. In relation to the Applicant's request that I decide the merits of his 15 January Request, I have noted that whether or not counsel can withdraw from representing a client before the Tribunal requires a careful balancing of all interests involved, including the risk of disruptions to the proceedings. I have further carefully reviewed lead counsel's response in this respect. While the Applicant invokes [REDACTED] as reason for an expeditious decision on his withdrawal, I find that these [REDACTED] have not been specified by the Applicant. Lead counsel, [REDACTED]. For example, there [REDACTED]. Nonetheless, the core issues [REDACTED] are not sufficiently clear for me to be able to take a position on whether it would be in the interests of justice for him to withdraw as co-counsel. Furthermore, I find that an exploration of these arguments is best dealt with in a first instance decision and by the Registrar, who is vested with the primary responsibility of, and is most familiar with, matters relating to defence counsel. For these reasons, I also deem it unjustified to order any interim measures as requested by the Applicant.

14. Lastly, in relation to the Applicant's request concerning one of the defence's legal assistants, I note that no decision has been issued by the Registrar which could be judicially reviewed by me. To the extent the Applicant suggests that the Registrar's failure to issue a decision is tantamount to a denial of his request, and should thus be judicially reviewed, I note that the Applicant did not submit any details about this matter, such as dates and further information about any requests to the Registrar, which I would need in order to decide on the matter. The Registrar also submitted that a formal request was never made and that he responded to all informal communications in relation to this matter. The Applicant in his Second Additional Submission submits that he made a formal request to the Registrar on 30 April 2015. Under these circumstances, I will deny this request. I also consider it to be inefficient to remain seised of this request until the Registrar has taken a decision which would lead the Applicant to seek a presidential review.

V. DISPOSITION

15. For the foregoing reasons, I hereby

QUASH the Impugned Decision;

DECLARE that the Applicant has standing to seek his withdrawal before the Registrar;

REMAND the matter to the Registrar for resolution; and

DENY the remainder of the Applicant's requests.

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

*As was signed by me
on the 7th of May 2015*

Judge Alphons Orié
Acting President

9th July 2015

Dated this Seventh day of May 2015
At The Hague
The Netherlands

[Seal of the Tribunal]