

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

CASE No. IT-95-05/18-T

IN TRIAL CHAMBER No. 3

Before: Judge O-Gon Kwon, Presiding
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Date: 4 December 2009

THE PROSECUTOR

v.

RADOVAN KARADZIC

Public

MOTION TO VACATE APPOINTMENT
OF RICHARD HARVEY

The Office of the Prosecutor:
Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused:
Radovan Karadzic

1. Dr. Radovan Karadzic respectfully moves the Trial Chamber, pursuant to its duties to ensure a fair trial,¹ and Article 13(B) of the Directive on Assignment of Counsel, for an order vacating the assignment of Richard Harvey as counsel in his case.

2. In making the assignment over Dr. Karadzic's objection, the Registrar has violated the ICTY Statute, the Appeals Chamber jurisprudence and his own Directive on Assignment of Counsel.

Procedural History

3. On 5 November 2009, the Trial Chamber issued its *Decision on Appointment of Counsel and Order on Further Trial Proceedings*. In that decision, the Trial Chamber directed the Registrar to appoint a stand-by counsel for Dr. Karadzic.

4. The Registrar thereafter refused to provide the Rule 45 list of counsel to Dr. Karadzic from which he could select his standby counsel. Instead, it presented him the names of five people it selected from that list, all from countries which had conducted air-strikes against the Republika Srpska, and four of whom had previously represented Kosovo Liberation Army leaders at the ICTY. No lawyers from Bosnia or Serbia were among the names provided to Dr. Karadzic.

5. When the Registrar insisted that Dr. Karadzic select a lawyer from among the five lawyers from NATO states, Dr. Karadzic again requested that he be provided with the list of Rule 45 counsel so that he could choose a lawyer from that list.² The Registrar refused and appointed Richard Harvey on 19 November 2009.³

The Statute

6. The Registrar's decision violated Article 21(4) of the Statute, which provides that the accused shall be entitled to the following minimum guarantees, in full equality:

- (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel **of his own choosing**;
- (d) ...to defend himself in person or through legal assistance **of his own choosing** (emphasis added)

¹ *Decision on Accused's Request for Judicial Review of the Registry Decision on the Assignment of Marko Sladojevic as Legal Associate* (20 April 2009) at para. 8

² A copy of that letter is attached as Annex "A".

³ *Decision* (19 November 2009)

The Appeals Chamber's Jurisprudence

7. The Registrar's decision to appoint Mr. Harvey and his refusal to provide the Rule 45 list of counsel from which Dr. Karadzic could select standby counsel was a blatant violation of Appeals Chamber jurisprudence. In the *Seselj* case, the Appeals Chamber squarely held that:

"Should a time come when the Trial Chamber feels justified to make such a decision [imposing standby counsel], the Rule 44 list of counsel should be provided to Seselj and he should be permitted to select standby counsel from that list...Should Seselj refuse to cooperate in selecting counsel from the list, the Registry may choose counsel at its discretion."⁴

The Directive on Assignment of Counsel

8. The Registrar also violated his own Directive on Assignment of Counsel in several respects.

9. First, Article 11(D) of that Directive provides that:

Where the Registrar decides to assign counsel in accordance with this Article, the Registrar shall:

- (i) **assign the counsel selected by the suspect or accused** from the list drawn up in accordance with Rule 45(B), provided that there is no impediment to the assignment of that counsel; or
- (ii) if the suspect or accused fails to select a counsel from the list drawn up in accordance with Rule 45(B) or if the Registrar determines that there is an impediment to the assignment of the counsel selected, assign other counsel from that list after hearing the suspect or accused. (emphasis added)

10. It is clear that a person to whom counsel is being assigned has the right to select a counsel from the Rule 45 list, not some hand-picked list of five favorites of the Registrar.

11. The Registrar's assignment of Mr. Harvey also violated Article 16(G) of that same directive. That article provides:

⁴ *Prosecutor v Seselj*, No. IT-03-67-AR73.4, *Decision on Appeal Against the Trial Chamber's Decision (No. 2) on Assignment of Counsel* (6 December 2006) at para. 28

No counsel shall be assigned to more than one suspect or accused at a time, unless:

- (i) each accused has received independent legal advice from the Registrar and both have consented in writing and
- (ii) the Registrar is satisfied that there is no potential or actual conflict of interest or a scheduling conflict, and that the assignment would not otherwise prejudice the defence of either accused, or the integrity of the proceedings.

12. The Registrar's decision dutifully notes that Mr. Harvey currently represents Mr. Lahi Brahimaj in the *Haradinaj et al* case, and that Mr. Brahimaj has consented to the assignment of Mr. Harvey. However, Article 16(G) requires that **each** accused consent to the appointment in writing. Dr. Karadzic has never consented, and will not consent, to the assignment of Mr. Harvey as his counsel.

13. Indeed, in his closing brief for Mr. Brahimaj, Mr. Harvey wrote:

Lahi Brahimaj makes no apology for helping to arm defenceless villagers and he maintains the right of the people of Kosovo to struggle for freedom and independence and to defend themselves against aggression. These are not crimes at international law. At all times he fought to defend the honour of the people of Kosovo and opposed all forms of ethnic, political and religious discrimination.⁵

14. He further wrote that:

Further, the Prosecution have sought to present the ethnic Albanian population in Kosovo as the aggressors against the Serbs. This stands logic and history on their heads, as if Nelson Mandela had been the aggressor against *apartheid* South Africa...the Kosovar Albanians waged a national liberation struggle against alien domination that has the sanction of international law.⁶

15. Dr. Karadzic does not believe that Mr. Harvey can attack Serbs in one trial and turn around and defend them in another.

16. Since he did not consent to Mr. Harvey's simultaneous representation of him and Mr. Brahimaj, the assignment of Mr. Harvey to his case violated Article 16(G) of the Registrar's own directive.

⁵ *Prosecutor v Haradinaj et al*, No. IT-04-84-T, *Final Trial Brief on Behalf of Lahi Brahimaj* (14 January 2008) at para. 4

⁶ *Ibid* at paras. 297-98

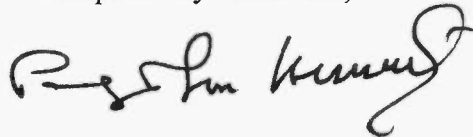
Conclusion

17. The Registrar's failed to follow the Statute, Appeals Chamber jurisprudence, and his own directive. His decision should be quashed immediately and the Rule 45 list of counsel should be ordered to be provided to Dr. Karadzic so that he may select his standby counsel.

18. The Registrar's actions deprived Dr. Karadzic of the right to select a lawyer with whom he shares a common heritage, language, and trust, and who has familiarity with the conflict in Bosnia. Instead, the Registrar has selected a lawyer from a NATO country who has represented at this Tribunal only those who have fought against the Serbs. If the Trial Chamber countenances this illegal action by the Registrar, Dr. Karadzic can be certain that he will not receive a fair trial in this institution.

Word count: 1223

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Radovan Karadzic', written in a cursive style.

Radovan Karadzic

ANNEX “A”

IT-95-5/18 T
Др Радован Карацић
УН ДУ
13. 11. 2009.

С Е К Р Е Т А Р У Т Р И Б У Н А Л А

Г. Цону Хокингу

Поштовани г. Хокинг,

Искрено жалим што ми није остављено више времена за ово изјашњавање, те што тренутно немам подршку тима да бих ово писмо написао на енглеском језику.

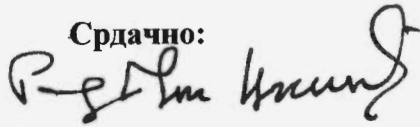
Хвала на могућности да разговарам са угледних адвокатима које је Секретаријат одабрао да ми предложи као могуће стенд бај адвокате.

Након ових интервјуа могу да кажем да су све ове личности биле изузетно децентне и искрене, те да су изразиле скепсу у погледу времена за које би могли бити спремни. Нико од њих се није изјаснио да поседује способност тзв. брзог читања, но и подвукли су да од брзог читања не би било користи, јер је потребно споро читање са разумевањем и анализом.

Такође, нико од њих нема претходно знање о збивањима у Босни, (изузев Вишеграда у једном случају, али Вишеград се не налази у мојој оптужници) тако да не можемо рачунати да би претходна пракса била од користи у скраћењу времена за припреме. Напомињем да су осим овог ограничења, које се показује као пресудно, сви они оставили изванредан утисак на мене, у шта спада и изузетна етичност у погледу могућности да до 1. марта спремне предмет на задовољавајућем нивоу.

Због тога љубазно тражим да ми хитно пошаљете Листу 44, како бих потражио личност која би имала претходна знања. Верујем да би на тој листи требало да буду и сви адвокати из региона одакле долазим, јер би моје споразумевање са њима било брже и лакше, и јер сви они имају доста претходних информација.

Искрено хвала,

Срдачно:

Др Радован Карацић

Dr.Radovan Karadzic
UNDU
13.11.2009

To the Registrar
Mr.John Hocking

Dear Mr.Hocking,

I am truly sorry that I have not been given more time for this submission, and that I did not have a support of my team so that I could write this letter in English.

I hereby wish to thank you for allowing me to talk to the respectable lawyers which had been chosen by the Registry as a possible solution for a stand-by counsel.

After conducting the interviews, I could say that all of them are very decent persons, and all of them expressed skepticism in relation to the time necessary for them to be prepared. None of them had said that he has the ability to read fast. Also, all of them stressed that fast reading would not bring us any benefit, since we need enough time for slow and analytical reading.

Also, none of them has any prior knowledge about the events in Bosnia, (except in one case about the city of Visegrad, but this town is not in the Indictment any more), so we can not count on their prior experience to help us in shortening the time for the preparation. I wish to stress that except from this limitation, which is the crucial one, all of them made an excellent impression on me, including their extraordinary high ethical standards in relation to the possibility to be sufficiently prepared for the case by the 1 March 2010.

Because of this, I kindly request that you send me the list 44, so I could search for the person with the adequate prior knowledge. I believe that all the lawyers from the region where I come from should be included in this list, because my communication with them would be much faster and smoother, and because all of them already have a lot of prior information.

Thank you very much.

Sincerely,

Dr.Radovan Karadzic