UNITED NATIONS

	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-03-67-PT
		Date:	9 May 2003
		Original:	English

IN TRIAL CHAMBER II

Before: **Judge Wolfgang Schomburg, Presiding**
Judge Florence Ndepele Mwachande Mumba
Judge Carmel A. Agius

Registrar: **Mr. Hans Holthuis**

Order of: **9 May 2003**

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

DECISION ON PROSECUTION'S MOTION FOR ORDER APPOINTING COUNSEL TO ASSIST VOJISLAV ŠEŠELJ WITH HIS DEFENCE

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff
Mr. Daniel Saxon

The Accused:

Vojislav Šešelj

A. Introduction

1. 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 ("the Tribunal") is seised of the Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence ("Prosecution's Motion") filed on 28 February 2003.

B. Procedural history

2. The Accused Vojislav Šešelj surrendered himself to the International Tribunal on 24 February 2003. On 25 February 2003, in accordance with Rule 45(G) of the Rules of Procedure and Evidence ("the Rules"), he stated his intention to defend himself in a letter addressed to the Registry. The Initial Appearance of the Accused was held on 26 February 2003. At the Initial Appearance the Accused stated that his decision to defend himself was a definite one. He also stated that "it is possible that I will engage an assistant and a legal advisor who will never appear on my behalf in this courtroom. They will never appear in this courtroom. I retain this exclusivity of appearing in the courtroom on the side of the accused."[1] A further appearance of the Accused under Rule 62(iii) of the Rules and a Status Conference were held on 25 March 2003. At the further appearance the Accused was reminded of his right to counsel but repeated that he wanted to defend himself and stated that "nothing will change in this respect until the end of the trial".[2] The Accused filed his response ("Accused's Response") to the Prosecution's Motion on 20 March 2003, the English translation of which was received by the Trial Chamber on 1 April 2003.[3]

C. Arguments of the Parties

1. The Prosecution

3. The Prosecution seeks an order from the Trial Chamber directing that legal counsel be appointed to assist the accused with his defence. In the view of the Prosecution, the interests of justice require such action due to the complexity of the case; the Accused's express intention to cause harm to the Tribunal and to use the proceedings as a forum for Serb national interests; the consequent possibility of a disorderly trial; the necessity to safeguard the administration of justice; and the public interest in the restoration of peace in the former Yugoslavia.

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[1] T.6.
[2] T.57.
[3] The Trial Chamber notes that there are small, and probably insignificant, gaps in the translation as a result of the illegibility of some parts of the original hand written motion.

4. The Prosecution argues that the circumstances of the Accused's request to represent himself are distinguishable from those of Slobodan Milošević who is currently the only other accused before this Tribunal conducting his own defence. The Prosecution also requested the imposition of defence counsel in the Milošević case, but in that case the main reason was concern about the toll that self-representation was taking on Milošević's health. In contrast to Milošević, the Prosecution believes that the Accused Šešelj has intimated to and may behave in a "disruptive, obstructionist or scandalous"[4] manner. This belief is based on remarks allegedly made by Šešelj to the effect that he intends to use the Tribunal as a political stage and source of media attention.[5]

5. In the view of the Prosecution, both international law and Article 21(4)(d) of the Statute allow Trial Chambers to impose counsel on an accused where the interests of justice so require.

6. The Prosecution submits that in this exceptional case it would be problematic to "incorporate wholesale the civil law practice of allowing an accused to play a direct role in the proceedings, even when counsel is assigned".[6] The Prosecution suggests that there might remain some limited scope for the Accused to participate directly in the proceedings with the leave of the Chamber so long as he does not interfere with the normal conduct of the proceedings.

2. The Accused

7. The Accused devoted only thirteen pages of his ninety-three page "Reply to the Prosecutor's Motion to impose defence counsel on me against my will" ("Accused's Response") to the concrete legal question actually at issue.[7]

8. The Accused refutes the legal relevance of the objections of the Prosecution to his "well-known political attitude"[8] towards the Tribunal. He emphasises that his decision to conduct his own defence is "final and irrevocable"[9] and that he would never accept any defence counsel assigned by the Tribunal against his will.

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[4] Prosecution's Motion, para. 11.
[5] Prosecution's Motion, paras 9-13, footnotes 18, 20, 23-26 and related attachments. For example, the Accused allegedly stated in 1994 in an interview for a French film "Crimes et Criminels" that: "Personally, I do not recognize this Hague Tribunal. I think it has no legal foundation, but if I am ever invited to The Hague I'll gladly go there immediately. I would never miss such a show." He is reported to have said that "he would gladly travel to The Hague to 'destroy' the war crimes tribunal in case it open[ed] a trial against him", Deutsche Presse-Agentur, 3 February 2003. At a press conference of the Serbian Radical Party on 9 February 2003 he allegedly stated that "the Tribunal in The Hague is an extraordinary ground where I could defend and protect the Serb national interests". On 4 February 2003, the Belgrade daily "Blic Politika" reported the Accused as saying that the Tribunal would be "a good training field for the protection of Serb national interests".
[6] Prosecution's Motion, para. 14.
[7] The remainder of the Accused's Response amounted to a frivolous abuse of the Tribunal's Translation Unit.
[8] Accused's Response, p. 1.
[9] Ibid.

9. The Accused maintains that the legal practice of the Tribunal, notably in the Milošević case, supports his position and that "[s]uch practice cannot be changed from case to case".[10]

10. The Accused argues that Article 21 of the Statute, criminal law doctrine, and international and national law (with reference mainly to English and United States law) guarantee the right of an accused to conduct his own defence. In his view the Prosecution is selective in choosing what to take from the continental legal systems and what to ignore. He objects to the Prosecution's suggestion that even where counsel is assigned he could be allowed, to a limited extent, to "participate in the proceedings, provided that he does not interfere with the normal conduct of the proceedings".[11]

D. Applicable Law

11. According to Article 20 of the Tribunal's Statute:

> 1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

Article 21 of the Tribunal's Statute, "Rights of the Accused", provides:

> 4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
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> (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right, and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

The Rwanda Tribunal has an identical provision to Article 21(4)(d) in its Statute (Article 20(4)(d)) and also an additional provision in its Rules of Procedure and Evidence, Rule 45 *Quarter* on "Assignment of Counsel in the Interests of Justice", which states:

> The Trial Chamber may, if it decides that it is in the interests of justice, instruct the Registrar to assign a counsel to represent the interests of the accused.

The wording of Article 21 of this Tribunal's Statute does not on its face exclude the possibility of offering an accused the assistance of assigned counsel where the interests of justice so require. The need may arise for unforeseeable reasons to protect an accused's interests and to ensure a fair and expeditious trial.

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[10] Ibid, p. 3.
[11] Ibid. p. 6.

12. The question of the appointment of defence counsel to assist an accused who is asserting his right to self-representation has so far only arisen in one case before this Tribunal. On 18 December 2002 the Trial Chamber in the Milošević case, in an oral ruling, rejected the Prosecution's request to impose defence counsel "in the present circumstances" of the case under consideration, because it was "not normally appropriate in adversarial proceedings such as these", but decided to "keep the position under review".[12] On 4 April 2003, the Trial Chamber set out in writing the reasons for its oral ruling ("Milošević Reasons"). The Trial Chamber noted the essentially adversarial nature of the proceedings before the Tribunal and found the imposition of defence counsel to be a feature of inquisitorial rather than adversarial systems. It was felt that in an adversarial system, counsel assigned against the will of the accused could not fulfil his obligation to put the case for the defence as he would have no instructions from the accused. The Trial Chamber pointed to international and regional human rights conventions that articulate a right to defend oneself in person. However, it was commented that "it is possible that some of these conventions may allow for certain exceptions to the main principle that an accused has a right to defend himself in person".[13] Practical considerations also formed a basis for the Trial Chamber's decision.[14] The Trial Chamber concluded by stating that "the right to defend oneself in person is not absolute" and observing that "there may be circumstances...where it is in the interests of justice to appoint counsel".[15] In sum, the Trial Chamber's reasoning leaves avenues open. It should be noted, moreover, that in the Milosevic case three *amici curiae*, performing the traditional role of "friends of the court", had already been appointed, in addition to two "legal associates" who have filed their powers of attorney with the Registry but who do not appear in court. With respect to the "legal associates", the Trial Chamber considered "that it would be in the interests of a fair trial for the accused to meet with and be able to communicate freely with persons for legal advice, and to be able to discuss and supply them with copies of Protected Materials".[16] The proposed "legal associates" had to satisfy the Registrar as to their qualifications under Rule 44(A) and agreed to be bound by all Orders of the Trial Chamber.

13. The role of the *amici curiae*, as defined by the Trial Chamber in the Milošević case, is not to represent the Accused, but to assist the court by:[17]

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[12] Prosecutor v Slobodan Milošević, Case No. IT-02-54-T, Trial Transcript 14574, 18 December 2002. See also Reasons for Decision on the Prosecution Motion Concerning Assignment of Counsel, 4 April 2003, (Milošević Reasons), para. 8.
[13] Milošević Reasons, para. 36.
[14] Milošević Reasons, para. 38.
[15] Milošević Reasons, para. 40, making reference to Rule 80(B) of the Rules.
[16] Case No. IT-02-54-T, Order, 16 April 2002.
[17] Milošević Reasons, para. 3, referring to Status Conference, 30 August 2001, Case No. IT-99-37-PT, T.6-7; Order Inviting Designation of Amicus Curiae, 30 August 2001; and Order Concerning Amici Curiae, 11 January 2002.

> (a) making submissions properly open to the Accused by way of a preliminary or other pre-trial motion;
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> (b) making any submissions or objections to evidence properly open to the Accused during the trial proceedings and cross-examining witnesses as appropriate;
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> (c) drawing to the attention of the Trial Chamber any exculpatory or mitigating evidence; and
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> (d) acting in any other way which designated counsel considers appropriate in order to secure a fair trial.

14. The question of the imposition of defence counsel has not arisen directly in the jurisprudence of the Rwanda Tribunal, but has been alluded to in the context of a request for the replacement or withdrawal of counsel.[18] In the *Barayagwiza* proceedings, defence counsel asked to be withdrawn as a consequence of Barayagwiza's refusal to appear in court and his instructions to counsel not to represent him in any respect during the trial. The Trial Chamber found that Barayagwiza was merely boycotting the trial and obstructing the course of justice and that the withdrawal of counsel was not warranted.[19] The Trial Chamber referred to the "well established principle in human rights law that the judiciary must ensure the rights of the accused, taking into account what is at stake for him"[20] and noted that:

> Counsel is assigned, not appointed. In the view of the Chamber, this does not only entail obligations towards the client, but also implies that he represents the interest of the Tribunal to ensure that the Accused receives a fair trial. The aim is to obtain efficient representation and adversarial proceedings.[21]

Judge Gunawardana, making reference to the case law of the United States, advocated in such circumstances the procedure of court-appointed standby counsel under Article 20(4)(d) of the Statute of the Rwanda Tribunal.[22] Indeed, he considered Article 20(4)(d) to be "an enabling provision for the appointment of a 'standby counsel'" and highlighted the court's power to control its own proceedings.

15. In the United States, as in other common law jurisdictions, an accused is entitled to conduct his own defence and interference with this right is limited.[23] In the case of *Faretta v California*, the United States Supreme Court for the first time held that forcing a lawyer upon a defendant who is

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[18] See *Prosecutor v Jean-Bosco Barayagwiza*, Case No. ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, (Trial Chamber), 2 November 2000; *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgment (Appeals Chamber), 1 June 2001.
[19] *Prosecutor v Jean-Bosco Barayagwiza*, Decision on Defence Counsel Motion to Withdraw, para. 24.
[20] Ibid, para. 23.
[21] Ibid, para. 21.
[22] *Prosecutor v Jean-Bosco Barayagwiza*, Decision on Defence Counsel Motion to Withdraw, Concurring and Separate Opinion of Judge Gunawardana.
[23] See the case law of the United States, England and Wales, and Canada referred to in footnote 2 of the Prosecution's Motion. See also the English case of *McKenzie v McKenzie*, [1970] 3 All ER 1034, where it was permissible for a

literate, competent and understanding, and who voluntarily exercises his informed free will by waiving his right to the assistance of counsel, would be a breach of the accused's constitutional right to conduct his own defence.[24] However, the Court held that self-representation by a defendant who deliberately engages in serious and obstructionist misconduct may be terminated.[25] A court may appoint standby counsel at the outset of trial "even over objection by the accused"[26] to aid the accused and to be available to represent him in the event that termination of his self-representation is necessary. In the case of *McKaskle v Wiggins*, the Supreme Court upheld a lower court decision allowing the accused to represent himself at trial, but appointing standby counsel to assist him.[27] The Supreme Court spoke of respect for the accused's "Faretta rights" where the primary focus should be on whether the accused had a fair chance to present his case in his own way. A two-part test was adopted to determine the constitutionality of standby counsel: first, the *pro se* defendant must preserve actual control over the case he chooses to present to the jury; second, standby counsel's actions should preserve the jury's perception that the defendant is conducting his own defence. Furthermore, the *pro se* defendant should be allowed to address the court freely on his own behalf. In *Farhad v United States*,[28] Judge Reinhardt commented in a concurring opinion that neither the right to counsel nor the right to self-representation is an absolute right.[29] He argued that permitting self-representation regardless of the consequences threatens to divert criminal trials from their clearly defined purpose of providing a fair and reliable determination of guilt or innocence.[30] He also observed that a defendant could not waive his right to a fair trial, a right that implicates not only the interests of the accused but also the institutional interests of the judicial system. Moreover, the government had a compelling interest, related to its own legitimacy, in ensuring both fair procedures and reliable outcomes in criminal trials.[31]

16. In the civil law tradition it is common practice to assign counsel mandatorily, especially in serious cases. For example, according to Articles 274 and 317 of the French *Code de Procédure Pénale*, a person accused of a serious crime must either choose counsel or be assigned counsel, and must be represented by counsel at hearings. Similarly, Article 294 of the Belgian *Code d'instruction criminelle*, dealing with the procedure before the *Cour d'Assises*, provides that an

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defendant who was representing himself to obtain assistance in a lengthy complex trial even though the assistant did not act as the defendant's advocate.

[24] 422 U.S. 806 (1975), 1975 U.S. LEXIS 83.

[25] Ibid.

[26] Ibid, 834-5, n. 46.

[27] 465 U.S. 168 (1984).

[28] 190 F.3d 1097 (9th Cir. 1999).

[29] Ibid, 1101. See also *Martinez v Court of Appeal of California*, 120 S.Ct.684 (2000) where the Supreme Court stated that the right to waive counsel is not absolute. In a footnote the Court stated "even at the trial level, the government's interest in ensuring the integrity and efficiency of the trial at times out-weighs the defendant's interest in acting as his own lawyer".

[30] Ibid, 1106.

[31] Ibid, 1107-8.

accused must either choose counsel or have one assigned. Section 140 of the German Code of Criminal Procedure[32] provides that the assistance of defence counsel shall be mandatory if the accused is charged with a serious criminal offence. The presiding judge also has a discretion to appoint defence counsel *ex officio* because of the difficult factual or legal situation. Under section 240, the accused may be permitted to question witnesses. Section 731 of the Danish Administration of Justice Act lists specific circumstances where defence counsel is mandatory.

17. The Criminal Procedure Act of the Federal Republic of Yugoslavia[33] provides the most relevant example. Article 13 of the Act states that "An accused has the right to defend himself in person or with the expert assistance of a counsel of his own choice". Under Article 71, if proceedings are instituted for a criminal offence punishable by more than ten years imprisonment or a harsher penalty, the accused must have a defence counsel even at his first interrogation.[34] An accused against whom detention is ordered must have a defence counsel as soon as the court renders a ruling on detention. In these circumstances, defence counsel is assigned to the accused if he has not engaged counsel. Notably, defence counsel is also mandatory where the accused has the requisite legal qualifications. In accordance with Articles 318 and 331, an accused is entitled to participate in proceedings and question witnesses through, or with the authorisation of, the presiding judge.

18. Human rights norms guarantee both a right to self-representation and a right to legal assistance in similar terms to Article 21(4)(d) of the Statute. Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) provides:

> In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
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> (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any case if he does not have sufficient means to pay for it.

In the case of *Michael and Brian Hill v Spain*, the Human Rights Committee found that the accused had the right to defend himself pursuant to Article 14(3)(d) even where assistance was required by statute.[35] However, this decision did not address the question of mandatory defence counsel in detail, and it is doubtful if it can be understood to imply that any rule requiring the assignment of

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[32] Strafprozeßordnung.
[33] Today, Serbia and Montenegro.
[34] Article 66 of the Criminal Procedure Code for the Federation of BiH of 20 November 1998 provides in similar terms: "if the proceedings are being conducted for a crime for which the penalty of extended imprisonment may be pronounced, the accused must have defence counsel from the very first examination."
[35] Communication No. 526/1993 (views adopted on 2 April 1997 at the fifty-ninth session of the Committee), Reports of the Human Rights Committee, vol. II, GAOR, Suppl. 40 (A/52/40).

defence counsel in the procedural codes of civil law systems is incompatible with the ICCPR. In other words, the Human Rights Committee does not go so far as to recognise an absolute right to self-representation. Indeed, the right to self-representation need not be incompatible with the requirement of assistance provided the defendant is not denied the opportunity to play any part in the proceedings. The Hill case is, moreover, distinguishable on its facts which reveal that assigned counsel were incompetent and the accused received an unfair trial in numerous respects.

19. Article 6(3) of the European Convention on Human Rights provides:

> Everyone charged with a criminal offence has the following minimum rights:
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> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

In the case of *Croissant v Germany*,[36] the European Court of Human Rights found that Article 140 of the German Code of Criminal Procedure, "which finds parallels in the legislation of other Contracting states" was not incompatible with Article 6(3) of the Convention. Croissant was represented at his trial by two defence counsel of his choice and one court appointed defence counsel. He objected to the appointment of the third defence counsel and to the choice of the person concerned. The Regional Court considered that the third defence counsel was necessary to ensure that the trial would take its course according to the principles laid down in the Code of Criminal Procedure, and that the accused was adequately represented having regard to the possible length of the trial and to the size and complexity of the case.[37] The Court of Appeal upheld this decision.[38] Croissant submitted before the European Court of Human Rights that the appointment of a third defence counsel was unnecessary and that its main aim was to convenience the court by ensuring that the trial proceeded without interruptions or adjournments.[39] The Court found that this aim corresponded to a relevant interest of justice that may well justify an appointment against the accused's wishes.[40] The Court then endorsed the Regional Court's argument concerning the need to ensure that the accused was adequately represented throughout his trial, having regard to its probable length and to the size and complexity of the case.[41] In the context of the right to be defended by counsel of one's own choosing, the Court stated that this right was not absolute and that it was for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them.[42] Therefore, while Croissant did not elect to represent

[36] European Court of Human Rights, No. 62/1991/314/385, 25 September 1992, A237-B.
[37] Ibid, para. 9.
[38] Ibid, paras 10 and 15.
[39] Ibid, para. 28.
[40] Ibid.
[41] Ibid.
[42] Ibid, para. 29.

himself, but rather chose to present his case through two counsel of his choosing, the case dealt with self-representation in a broader context and underscored that the aim of preserving proper trial order can be a valid reason for the assignment of counsel.

E. Discussion

20. Article 21 of the Statute, and the jurisprudence of this Tribunal and the Rwanda Tribunal, leave open the possibility of assigning counsel to an accused on a case by case basis in the interests of justice. The existence of Rule 45 *Quarter* of the Rwanda Tribunal's Rules of Procedure and Evidence confirms that the assignment of counsel in the interests of justice to represent the interests of an accused is considered by the Rwanda Tribunal to be in conformity with Article 20 of its Statute which has the same wording as Article 21 of this Tribunal's Statute. In reaching its decision in this case, the Trial Chamber takes the right to self-representation articulated in the Statute as a starting point, but notes that according to international and national jurisprudence, this right is not absolute.

21. The phrase "in the interests of justice" potentially has a broad scope. It includes the right to a fair trial, which is not only a fundamental right of the Accused, but also a fundamental interest of the Tribunal related to its own legitimacy. In the context of the right to a fair trial, the length of the case, its size and complexity need to be taken into account. The complex legal, evidential and procedural issues that arise in a case of this magnitude may fall outside the competence even of a legally qualified accused, especially where that accused is in detention without access to all the facilities he may need. Moreover, the Tribunal has a legitimate interest in ensuring that the trial proceeds in a timely manner without interruptions, adjournments or disruptions.

22. The Trial Chamber notes that although the Accused states expressly that he will use "legal arguments and hard facts"[43] to "defeat"[44] the Tribunal, and that it would be premature to make any assessment as to his possible intention to harm or "destroy"[45] the Tribunal, good cause for concern has been shown following his declared intention to attempt to use the Tribunal as a vehicle for the furtherance of his political beliefs and aspirations.[46] If this tactic were resorted to, it would not only result in an abuse of the valuable judicial resources of the Tribunal but also hinder an expeditious trial.

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[43] Accused's Response, p. 1.
[44] Ibid.
[45] The Accused allegedly stated that "he would gladly travel to The Hague to 'destroy' the war crimes tribunal in case it open[ed] a trial against him", Deutsche Presse-Agentur, 3 February 2003.
[46] At a press conference of the Serbian Radical Party on 9 February 2003 he allegedly stated that "the Tribunal in The Hague is an extraordinary ground where I could defend and protect the Serb national interests". On 4 February 2003,

23. The Accused is in fact increasingly demonstrating a tendency to act in an obstructionist fashion while at the same time revealing a need for legal assistance. His hand written "Reply to the Prosecutor's Motion to impose defence counsel on me against my will" was not only excessively long but also largely irrelevant.[47] At the Status Conference on 25 March 2003, the Accused was offered a laptop or a typewriter to assist him in the preparation of his defence but he refused to accept the offer on the basis that he was "afraid of receiving an electric shock".[48] On 27 March 2003, he submitted a hand written petition directly to the Appeals Chamber, knowing and being oblivious to the fact that such action is not permissible under the Rules.[49] On 11 April 2003 a letter was sent to the Registrar from "Gojković Law Firm", signed by Maja Gojković who described herself as "Legal Adviser to Professor Vojislav Šešelj". The letter was not accompanied by the necessary power of attorney (Rule 44(A)). The letter requested that all documents sent to Maja Gojković in her capacity as "legal adviser" be done "exclusively in Serbian", whereas according to Rule 44(A), in principle[50] counsel shall be considered qualified only if, *inter alia*, he or she speaks one of the two working languages of the Tribunal. Notwithstanding the fact that the Accused was provided with a copy, in B/C/S, of the Practice Direction on the Length of Briefs and Motions[51] at the Status Conference on 25 March 2003,[52] in order to inform him of the relevant requirements, on 18 April 2003 he filed a hand written motion consisting of 116 pages, well in excess of the page limitation (10 pages) laid down in that Practice Direction. On 24 April 2003 he filed a hand written petition rejecting the letter addressed to him by the Senior Legal Officer of the Appeals Chamber dated 22 April 2003, and making various frivolous demands framed in language inappropriate for a legal document.

24. The Accused repeatedly insists that he only understands the Serbian language. However, the words that the Accused claimed not to be able to understand during his Initial Appearance are simply variants of one and the same language. The table in an Annex to this Decision shows the difference between the Serbian and Croatian form of some of the words the Accused himself claimed explicitly that he could not understand.[53] In the Dictionary of the Standard Serbo-Croatian Language published simultaneously in Novi Sad and Zagreb in 1967, the word "točka" is cited as being equivalent to "tačka", "obrana" is equivalent to "odbrana", and "opći" is equivalent to

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the Belgrade daily "Blic Politika" reported the Accused as saying that the Tribunal would be "a good training field for the protection of Serb national interests". See further footnote 18 of Prosecution's Motion and Attachments.

[47] See para. 7 above.

[48] T. 66.

[49] On p. 3 of the English translation of the Accused's submission to the Appeals Chamber he states: "With regard to interlocutory appeals...I find it intolerable that I should ask for permission to file an appeal, as it is stipulated by rules 72 and 73 of the Rules of Procedure and Evidence, in a manner utterly humiliating for the accused".

[50] Cf. Rule 44(B).

[51] IT/184/Rev.1, 5 March 2002.

[52] T. 67.

[53] See T.29-30, 44-45.

"opšti". The Trial Chamber is therefore satisfied that the Accused understands the language referred to as B/C/S.[54] Moreover, the Trial Chamber notes that in all translations provided to the Accused the Serbian variant is used. His unfounded complaint was related only to the use of the words in the Annex in a different variant during interpretation.

25. The Trial Chamber has, in addition, reason to believe that the Accused understands English.[55]

26. The attitude and actions of the Accused outlined in the previous four paragraphs are indicative of obstructionism on his part.

27. Based on the aforementioned facts, the Trial Chamber is of the view that at this stage of the proceedings, the best way to preserve the rights of the Accused while at the same time satisfying the interests of justice is to assign a "standby counsel" fulfilling the requirements of Rule 44(A).

28. The Trial Chamber emphasises that the Accused's right to defend himself is left absolutely untouched and that standby counsel is not an *amicus curiae* but an assistant operating in the sphere of the Accused only, who will serve to safeguard a fair and expeditious trial. Counsel-client privilege applies to any correspondence and communication between the Accused and standby counsel. Standby counsel is bound in the same way as any other counsel working with the Tribunal by the obligations protecting the interests of an accused.

29. The right to self-representation and the appointment of standby counsel do not exclude the right of the Accused to obtain legal advice from counsel of his own choosing. The human rights referred to earlier in this Decision are by their nature only minimum rights. It would be a misunderstanding of the word "or" in the phrase "to defend himself in person or through legal assistance of his own choosing" to conclude that self-representation excludes the appointment of counsel to assist the Accused or vice versa. The Accused may file a power of attorney under Rule 44(A) if he wishes to have additional assistance from counsel meeting the necessary requirements under that Rule. Such counsel would enjoy counsel-client privilege while being bound by all the obligations of counsel working with the Tribunal.

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[54] See T. 57-58 where the pre-trial judge concluded that "there's not the slightest doubt that this is the language you understand".

[55] According to the Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), Annex III.A, Special forces, S/1994/674/Add.2 (Vol. I), 28 December 1994, the Accused spent one year teaching at the University of Michigan in the United States after receiving his Ph.D. The source for this information in the United Nations Report is cited as David Begoun, "Potential Presidential Challenger Serbia's Fastest-Rising Nationalist Leader", The San Francisco Chronicle, 7 June 1993. It is also reported in BBC News: World Edition, *Profile: Vojislav Šešelj*, 21 February 2003, http://news.bbc.co.uk/2/hi/europe/2317765.stm, that the Accused spent one year teaching at the University of Michigan.

30. For the purposes of these proceedings, the role of standby counsel is strictly defined as follows:

- to assist the Accused in the preparation of his case during the pre-trial phase whenever so requested by the Accused;
- to assist the Accused in the preparation and presentation of his case at trial whenever so requested by the Accused;
- to receive copies of all court documents, filings and disclosed materials that are received by or sent to the Accused;
- to be present in the courtroom during the proceedings;
- to be engaged actively in the substantive preparation of the case and to participate in the proceedings, in order always to be prepared to take over from the Accused at trial (see below);
- to address the Court whenever so requested by the Accused or the Chamber;
- to offer advice or make suggestions to the Accused as counsel sees fit, in particular on evidential and procedural issues;
- as a protective measure in the event of abusive conduct by the Accused, to put questions to witnesses, in particular sensitive or protected witnesses, on behalf of the Accused if so ordered by the Trial Chamber, without depriving the Accused of his right to control the content of the examination;[56]
- in exceptional circumstances to take over the defence from the Accused at trial should the Trial Chamber find, following a warning, that the Accused is engaging in disruptive conduct or conduct requiring his removal from the courtroom under Rule 80(B).

[56] Such a measure would be less intrusive than the alternative option of interrupting and discontinuing the examination of the Accused himself in the interests of justice.

F. Disposition

PURSUANT TO Rule 54 and for the foregoing reasons, the Trial Chamber

HEREBY DECIDES that standby counsel as defined in paragraph 30 above shall be assigned to the Accused in this case, and

STATES that standby counsel must be fluent both in B/C/S and in one of the official languages of the Tribunal, and

ORDERS the Registry to assign one standby counsel from the list of counsel kept by the Registrar under Rule 45(B), and

STATES that this Decision is without prejudice to any subsequent decision regarding the assignment or appointment of counsel fulfilling the requirements of Rule 44(A), or investigators[57] or *amici curiae*, as the case progresses, either on application by either party or *proprio motu,* and

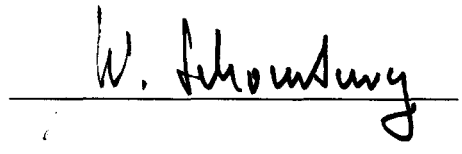
REJECTS the Prosecution's Motion in so far as that Motion seeks an order from the Trial Chamber "directing the Registrar to appoint legal counsel to assist the accused Šešelj with the preparation and conduct of his defence" without any limitation.

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

Dated this ninth day of May 2003

At The Hague

The Netherlands



Judge Wolfgang Schomburg

Presiding

[Seal of the Tribunal]

[57] Communication or correspondence with investigators is not to be regarded as privileged.

ANNEX

CROATIAN	SERBIAN	ENGLISH
hotimično	hotimično	wilful
opći	opšti	general (adj.)
točka	tačka	count; item
Zapadni Srijem	Zapadni Srem	geographic region
obrana	odbrana	defence
suradnja	saradnja	cooperation
općina	opština	municipality
spol	pol	gender
poganin	paganin	pagan