

**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-03-67-PT
Date: 16 July 2004
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding Judge
Judge Jean Claude Antonetti
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision of: 16 July 2004

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON DEFENCE MOTION FOR A RULING ON THE
RIGHTS OF THE ACCUSED TO COMMUNICATION AND
VISITS WHILE IN DETENTION**

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff
Mr. Ulrich Mussemeyer
Mr. Daniel Saxon

The Accused:

Mr. Vojislav Šešelj

Standby Counsel:

Mr. Tjarda Eduard van der Spoel

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") and Pre-Trial Judge in these proceedings;

BEING SEISED OF the "Defence motion for a ruling on the rights of the Accused to communication and visits while in detention" ("Defence Motion 31"), submitted on 10 June and filed after translation on 24 June 2004 by the accused Vojislav Šešelj ("Accused"), in which the Accused seeks a review of the 7 May 2004 decision of the Deputy Registrar ("Impugned Decision") extending certain restrictions on communication and visitation between the Accused and other persons;

NOTING the "Prosecution's Response to Defence Motion for a Ruling on the Rights of the Accused to Communication and Visits While in Detention", filed on 7 July 2004, in which the Prosecution submits that the issue raised by the Accused is moot and that the Trial Chamber is an inappropriate forum for the Accused's complaint;

NOTING that both the Impugned Decision and the subsequent 9 June 2004 decision of the Deputy Registrar, which extends the restrictions on the Accused's communication for the period from 13 June 2004 to 1 July 2004, are based upon the Rules 60 and 63 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or otherwise Detained on the Authority of the Tribunal (IT/38/Rev.8) dated 22 November 1999 ("Rules Governing Detention");

NOTING that Rules 84 and 85 of the Rules Governing Detention provide respectively that "[e]ach detainee may make a complaint to the Commanding Officer or his representative at any time", and that "[a] detainee, if not satisfied with the response from the Commanding Officer, has the right to make a written complaint, without censorship, to the Registrar, who shall forward it to the President";

NOTING that the complaints procedure set out in the Regulations for the Establishment of a Complaints Procedure for the Detainees Issued by the Registrar in April 1995 (IT/96) ("Complaints Procedure"), clearly provides in Regulation 4 that "[a] detainee may make a formal complaint concerning the conditions of his detention, including an alleged breach of the Rules of Detention or of any Regulations adopted thereunder, to the Registrar at any time ...";

NOTING further that Regulations 7 and 12 of the Complaints Procedure provide respectively that "[t]he Registrar shall examine the substance of the complaint and determine whether it should be dealt with by the Registrar, being a complaint about an administrative matter or a matter of general

concern, or whether it relates to an alleged breach of the rights of the individual detainee, in which case it shall be referred to the President for consideration”;

CONSIDERING that, in light of the above provisions and the stated views of the Appeals Chamber,¹ decisions regarding communication and visitation privileges of an accused fall within the competence of the Registry or the President and not of the Chambers;

CONSIDERING furthermore that from Defence Motion 31 it becomes clear that the Accused has failed to use the procedures as referred to above;

FINDING therefore that it has not been shown that the Trial Chamber has jurisdiction regarding Defence Motion 31;

FOR THE FOREGOING REASONS

PURSUANT TO Article 54 of the Statute of the Tribunal;

HEREBY DISMISSES Defence Motion 31 as incompetent.

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

Dated this 16th day of July 2004,

At The Hague

The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]

¹ Decision on the Interlocutory Appeal Concerning the Denial of a Request for a Visit to an Accused in the Detention Unit, 29 January 2004 (filed 3 February 2004).