



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: 23 July 2004
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision: 23 July 2004

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON DEFENCE MOTION FOR PROVISIONAL
RELEASE**

The Office of the Prosecutor:

Hildegard Uertz-Retzlaff
Ulrich Mussemeyer
Daniel Saxon

The Accused:

Vojislav Šešelj

Standby-Counsel:

Tjarda Eduard van der Spoel

A. Background

1. The Indictment charges Vojislav Šešelj with crimes against humanity under Article 5 and violations of the laws and customs of wars under Article 3 of the Statute of the International Tribunal (“Statute”) for offences allegedly committed in the territory of Croatia (SAO Western Slavonia and SAO SBWA, Vukovar), Bosnia and Herzegovina (Bosanski Šamac and Zvornik municipalities) and parts of Vojvodina in Serbia in the period from 1 August 1991 to September 1993. The Indictment was confirmed on 14 February 2003. The Accused surrendered voluntarily to the custody of the International Tribunal on 24 February 2003 and made his initial appearance on 26 February 2003. At his initial appearance the Accused stated that he would not be filing a motion for provisional release as he had come to the Tribunal of his own free will and did not believe that any government could provide guarantees on his behalf.¹

2. By a motion dated 14 June 2004 (“Defence Motion for Provisional Release”) the Accused requested his provisional release until the start of the trial against him. On 7 July 2004 the Office of the Prosecutor (“Prosecution”) responded opposing the Motion. By a letter filed on 15 July 2004 the Host Country indicated that it had no objection to the provisional release of the Accused, provided that upon release he leaves the Netherlands.

B. Arguments of the parties

3. In support of his Motion for provisional release the Accused submits, in particular, that he had offered to cooperate with the Prosecution even before he was formally indicted and that he surrendered voluntarily to the custody of the International Tribunal shortly after an indictment against him was issued.² It is submitted that the Accused is self-represented in the proceedings before the International Tribunal and that his procedural right to defend himself in person has been violated by his continuing detention.³ It is alleged that the trial against him is tentatively scheduled to commence only in early 2007 and that his right to fair and expeditious trial has been violated.⁴ The Accused also submits family reasons in support of his Motion.⁵

4. The Prosecution responds, *inter alia*, that the Accused’s voluntary surrender should be viewed in the context of his public statements that he does not recognize the validity or the impartiality of the Tribunal and does not accept the charges against him, and accordingly was not

¹ *Prosecutor v. Vojislav Šešelj*, Case No.: IT-03-67-PT, Order for Detention on Remand, 26 February 2003.

² Motion, para. 18.

³ Motion, paras 18, 19, 12, 14, 15.4, 15.5.

⁴ Motion, paras 19, 15.3, 17.

⁵ Motion, para. 19.

motivated by a desire to stand trial but by a sense of self-publicity and determination to undermine the work of the Tribunal.⁶ It is further submitted that the Accused is a public figure charged with serious criminal offences and if convicted he would likely face a lengthy term of imprisonment, that the Accused has produced no guarantees from the Republic of Serbia and Montenegro for his return for trial.⁷ Further, it is submitted that in light of his well documented behaviour during press conferences and proceedings before the Tribunal, where the Accused has disclosed confidential material or has made insulting remarks with respect to Tribunal witnesses, it is likely that he would intimidate witnesses and would try to deter them from giving evidence in the proceedings against him, even more so as now he is in possession of their unredacted statements.⁸ The Prosecution further submits that many Prosecution witnesses and victims continue to live in the territory of the former Yugoslavia and may find themselves at the same place as the Accused's supporters,⁹ that in light of his prior behaviour there are no reasons to believe that the Accused would respect any conditions imposed by the Tribunal on the terms of his provisional release,¹⁰ and that the Accused has a history of violence.¹¹

5. With respect to the Accused's claims that the proceedings against him violate his right to expeditious trial, the Prosecution submits that there have been no improper or unreasonable delays in the proceedings. It alleges that the case against the Accused involves a number of complicated factual and legal issues and that the length of the proceedings falls within the reasonable parameters for pre-trial detention recognized by important international human rights bodies.¹² It submits that in exercising its discretion the Trial Chamber should also consider the evidence of the Accused's attempts to interfere with the administration of justice.¹³

C. Discussion

6. Pursuant to Rule 65 of the Rules of Procedure and Evidence ("Rules") a Chamber may order a release of an accused *inter alia*, only if the Chamber is satisfied that:

- the accused will appear for trial, and
- if released, the accused will not pose a danger to any victim, witness or other person.

⁶ Prosecution Response, paras 11-15.

⁷ Prosecution Response, para. 17.

⁸ Prosecution Response, paras 19-24.

⁹ Prosecution Response, para. 25.

¹⁰ Prosecution Response, para. 26.

¹¹ Prosecution Response, paras 27-29.

¹² Prosecution Response, paras 30-36.

¹³ Prosecution Response, paras 37-38.

A provisional release may only be ordered by a Chamber if the Chamber is satisfied that the above two conditions are met. However, it is not the effect of the Rule that if the Chamber is satisfied about these matters, release should necessarily be granted. In that case the question whether to release an accused provisionally becomes a matter for the exercise of the Chamber's discretion. That discretion must be exercised in light of all the circumstances of the case. It is necessary for an accused to satisfy the Chamber that release is appropriate in a particular case. While it is accepted that detention is the most severe measure that can be imposed on an accused and is to be used only when no other measures can achieve the effect of detention, it is recognized that this does not preclude the use of detention in an appropriate case.¹⁴

7. The Trial Chamber further notes that unlike national jurisdictions where there are in existence established means to ensure the enforcement of court orders, the Tribunal has not got its own law enforcement mechanisms and is dependant on the effective cooperation and support of governments and agencies of States. An accused provisionally released by a Chamber will be under the jurisdiction of the State to which he or she is released. Therefore the questions of that State's willingness to ensure the accused's return to the Tribunal and his non-contact with victims and Prosecution witnesses while released, and the extent to which the Tribunal can confidently rely on the effective support of the State, are of importance in satisfying a Chamber that the requirements of Rule 65 are met.

8. In the present case, in the view of the Trial Chamber, none of the grounds put forward by the Accused provide a reason for his provisional release at the present time. The Trial Chamber further notes that the Accused's Motion provides no basis on which the Trial Chamber could be satisfied that if released the Accused will not pose any danger to victims or Prosecution witnesses. In this respect, the Trial Chamber also notes that no undertaking from a State to ensure the Accused's return for the commencement of his trial, and his non-interference with victims or Prosecution witnesses was presented in support of the Motion.

9. The Trial Chamber further observes that, by their nature, the charges alleged against the Accused are particularly grave. The likelihood is that in case of conviction the appropriate punishment will be severe. Although this circumstance alone is not necessarily a decisive factor for the Trial Chamber's decision whether to allow provisional release, it remains a relevant consideration.

¹⁴ See for example *Prosecutor v. Ivan Čermak and Mladen Markač*, Case No.: IT-03-73-PT, Decision on Ivan Čermak's and Mladen Markač's Motions for Provisional Release, 29 April 2004.

10. The Trial Chamber is mindful of the fact that the Accused represents himself in the proceedings. The Tribunal has held that an accused's right to adequate time and facilities for the preparation of his defence may be adequately safeguarded by means other than provisional release.¹⁵ In the present case, it is not demonstrated that the Accused's right to prepare his defence cannot be effectively exercised while in detention. This fact alone does not warrant his provisional release.


11. The Trial Chamber notes that the duration of the pre-trial detention is a factor relevant to its decision whether to continue detention.¹⁶ While the Accused has already spent 15 months in pre-trial detention, in light of the legal and factual complexity of the case, and in particular the number of witness statements and evidence that has to be disclosed to the Accused and the relevant procedural actions, this period is not unreasonable and does not *per se* constitute a ground for allowing the Motion. In any event this fact must be considered in light of all relevant factors in each case. In this respect matters advanced by the Prosecution and referred to in paragraph 4 weigh with some force against provisional release.

12. The Trial Chamber is not satisfied that, if released, the Accused will appear for trial and that he will not pose a danger to any victim or Prosecution witness. The Trial Chamber is not persuaded that the requirements of Rule 65 in these respects are met. Further, the Trial Chamber is not persuaded in any event that circumstances have been demonstrated by the Accused which would justify an exercise of discretion in favour of ordering his provisional release.

13. For these reasons the Motion is denied.

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

Dated this twenty-third day of July 2004
At The Hague
The Netherlands



Carmel Agius
Presiding

[Seal of the Tribunal]

¹⁵ *Prosecutor v. Slobodan Milošević*, Case No.: IT-02-54-T, Decision on Accused's Application for Provisional Release, 6 March 2002.

¹⁶ See for example *Prosecutor v. Rahim Ademi*, Case No.: IT-01-46-PT, Order on Motion for Provisional Release, 20 February 2002, para. 26.



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

Court
Management and
Support Services
Section

Tribunal Pénal
International pour
l'ex-Yougoslavie

Section des
services
d'administration et
d'appui judiciaire

CASE/AFFAIRE NO. IT-03-67-PT DATE 27/07/04

FROM/DE GEROLD SILLER, COURT DEPUTY

TO/A

0 President/Président	0 Prosecutor/Procureur	<input checked="" type="checkbox"/> (Defense Counsel/Conseil de la Défense) STANDBY COUNSEL	cc
0 Appeals Chamber/ Chambre d'appel	0 Case Manager/ Commis aux affaires	MR. Van der SPOEL	
0 Trial Chamber I/ Chambre de 1ère instance I	0 Chief of Investigations/ Chef des enquêtes		
0 Trial Chamber II/ Chambre de 1ère instance II		
0 Trial Chamber III/ Chambre de 1ère instance III		

0 Embassy/Ambassade

Other/Autre MR. ŠEŠELJ

0 Registrar/Deputy Registrar/Greffier/Greffier adjoint 0 VWS Coordinator/Coordinateur de la SVT

0 Senior Legal Officer/Juriste hors-classe 0 UNDU Commanding Officer/Commandant du QPNU

0 Chief of Public Information Services/Outreach 0 OLAD
Chef des Services d'Information Publique

PLEASE FIND ATTACHED / VEUILLEZ TROUVER CI-JOINT

0 Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/
Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ___/___/___

0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ___/___/___

0 Motion/Request/Application submitted by Prosecution/Defence Counsel on/
Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le ___/___/___

0 Response/reply/brief submitted by Prosecution/Defence Counsel on/
Réponse/Réplique/Mémoire présenté(e) par l'Accusation/le Conseil de la défense le ___/___/___

0 Decision of the Registrar on/Décision du Greffier le ___/___/___

Other/Autre ZAHTEV TUŽILAŠTVA ZA NEOBELODANJIVANJE IMENA I DRUGIH INFORMACIJA KOJE
OTKRIVAJU IDENTITET SVEDOKA (21/07/2004)

RECEIVED/RECU FILED/ENREGISTRE

Office hours/heures ouvrables
Date: 27 / 07 / 04

Office hours/heures ouvrables
Date: 27 / 07 / 04

0 Outside Office hours/en dehors des heures ouvrables
Date: ___/___/___

0 Outside Office hours/en dehors des heures ouvrables
Date: ___/___/___

Time/Heure: ___ h

Time/Heure: ___ h

Article 27.2- Directive for the Registry: A party anticipating a late filing will call the Registry during office hours to request permission of the Registrar and instruction for after hour filing.

Article 27.2-Directive pour le Greffe: une partie prévoyant un dépôt hors des heures ouvrables se mettra en rapport avec le personnel du Greffe durant les heures de bureau pour solliciter l'autorisation du Greffier et les instructions nécessaires.

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas
Tel.: 31-70-416 5000 Fax: 31-70-416 8637

Notice of confidentiality applicable to fax

This facsimile transmission contains United Nations proprietary information that is strictly confidential and/or legally privileged, and is intended solely for the use of officials of the United Nations and/or the named recipient hereof. Any unauthorized disclosure, copying, distribution or other use of the information herein is strictly prohibited. If you have erroneously received this facsimile transmission, please notify the United Nations immediately.



United Nations
Nations Unies



International
Criminal Tribunal
for the Former
Yugoslavia

**Court
Management and
Support Services
Section**

Tribunal Pénal
International pour
l'ex-Yougoslavie

**Section des
services
d'administration et
d'appui judiciaire**

CASE/AFFAIRE NO.	IT-03-67-PT	DATE	27/07/04
FROM/DE	GEROLD SILLER, COURT DEPUTY		

TO/A			
0 President/Président	<input checked="" type="checkbox"/> Prosecutor/Procureur	<input checked="" type="checkbox"/> (Defense Counsel/Conseil de la Défense) STANDBY COUNSEL	cc
0 Appeals Chamber/ Chambre d'appel	<input checked="" type="checkbox"/> Case Manager/ Commis aux affaires	MR. Van der SPOEL (D 4938 - D 4931)	
0 Trial Chamber I/ Chambre de 1ère instance I	0 Chief of Investigations/ Chef des enquêtes		
<input checked="" type="checkbox"/> Trial Chamber II/ Chambre de 1ère instance II		
0 Trial Chamber III/ Chambre de 1ère instance III		

0 Embassy/Ambassade		
<input checked="" type="checkbox"/> Other/Autre	MR. SESELJ	(D4938-D4931)
<input checked="" type="checkbox"/> Registrar/Deputy Registrar/Greffier/Greffier adjoint	MR. F. SWINNEN	0 VWS Coordinator/Coordinateur de la SVT
<input checked="" type="checkbox"/> Senior Legal Officer/Juriste hors-classe	MR. H. VON HEBEL/MR. K. ROBERTS (LO)	0 UNDU Commanding Officer/Commandant du QPNU
0 Chief of Public Information Services/Outreach Chef des Services d'Information Publique		<input checked="" type="checkbox"/> OLAD (D4938-D4931)

PLEASE FIND ATTACHED/ VEUILLEZ TROUVER CI-JOINT

0 Order/Warrant/decision issued by Appeals Chamber or Trial Chamber or a Judge on/ Ordonnance/Mandat/Décision émis(e) par la Chambre d'appel ou les Chambres de 1ère instance ou un Juge le ___/___/___
0 Order/Decision issued by the President on/Ordonnance/Décision émise par le Président le ___/___/___
<input checked="" type="checkbox"/> Motion/Request/Application submitted by Prosecution/Defence Counsel on/ Motion/Requête/Demande présentée par l'Accusation/le Conseil de la défense le <u>21 / 07 / 04</u>
0 Response/reply/brief submitted by Prosecution/Defence Counsel on/ Réponse/Réplique/Mémoire présentée(e) par l'Accusation/le Conseil de la défense le ___/___/___
0 Decision of the Registrar on/Décision du Greffier le ___/___/___
0 Other/Autre

RECEIVED/RECU	FILED/ENREGISTRE
<input checked="" type="checkbox"/> Office hours/heures ouvrables Date: <u>21 / 07 / 04</u> (ENGLISH ORIGINAL)	<input checked="" type="checkbox"/> Office hours/heures ouvrables Date: <u>27 / 07 / 04</u>
0 Outside Office hours/en dehors des heures ouvrables Date: ___/___/___ Time/Heure: ___ h	0 Outside Office hours/en dehors des heures ouvrables Date: ___/___/___ Time/Heure: ___ h

Article 27.2- Directive for the Registry: A party anticipating a late filing will call the Registry during office hours to request permission of the Registrar and instruction for after hour filing.
Article 27.2-Directive pour le Greffe: une partie prévoyant un dépôt hors des heures ouvrables se mettra en rapport avec le personnel du Greffe durant les heures de bureau pour solliciter l'autorisation du Greffier et les instructions nécessaires.

Churchillplein 1, 2517 JW The Hague. P.O. Box 13888, 2501 EW The Hague. Netherlands
 Churchillplein 1, 2517 JW La Haye. B.P. 13888, 2501 La Haye. Pays-Bas
 Tel.: 31-70-416 5000 Fax: 31-70-416 8637

**Notice of
confidentiality
applicable to fax**

This facsimile transmission contains United Nations proprietary information that is strictly confidential and/or legally privileged, and is intended solely for the use of officials of the United Nations and/or the named recipient hereof. Any unauthorized disclosure, copying, distribution or other use of the information herein is strictly prohibited. If you have erroneously received this facsimile transmission, please notify the United Nations immediately.