



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: 25 May 2006
Original: English

BEFORE THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision of: 25 May 2006

THE PROSECUTOR

v.

Vojislav ŠEŠELJ

**DECISION ON APPEAL AGAINST DECISION DENYING PERMISSION FOR LEGAL
REPRESENTATIVES TO VISIT THE DETAINEE**

Counsel for the Prosecutor:

Ms. Hildegaard Uertz-Retzlaff
Mr. Daniel Saxon
Mr. Ulrich Müssemeyer

The Accused:

Mr. Vojislav Šešelj

Standby Counsel:

Mr. Tjarda Eduard van der Spoel

1. On 13 April 2006, Vojislav Šešelj (“Šešelj”) filed a Complaint¹ before me pursuant to Rules 80 to 84 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“Rules of Detention”)² against a Decision of the Registrar³ denying his self-appointed legal representatives the right to visit him in the United Nations Detention Unit (“UNDU”). In his Complaint, he requests that I order the Registrar to grant him the right to be visited by his self-appointed legal representatives Mr. Zoran Karasić and Mr. Aleksander Vučić for the purpose of preparing his case against his Registrar assigned counsel, Mr. Tjarda Eduard Van der Spoel, before the Dutch Bar Association.⁴

2. Šešelj purports to file this Complaint before me pursuant to Rules 80 to 84 of the Rules of Detention. However, none of those Rules grant Šešelj a right to bring a complaint directly to the President of the International Tribunal. The clear procedure under those Rules is for Šešelj to first make a complaint to the Commanding Officer.⁵ If he is unsatisfied with the response of the Commanding Officer, he then has the right to make a written complaint to the Registrar, and the Registrar is directed to inform the President of the complaint.⁶ Upon submission of the complaint to the Registrar, the Registrar must deal with it without delay in consultation with the President.⁷

3. While Šešelj has no right to make a Complaint directly before me, I have determined that, in the interests of expediency, I will dispose of the Complaint on the basis that the reasoning provided in this Decision would have been my advice to the Registrar in any event if consulted by him under the proper procedure provided for in the Rules of Detention. In taking this approach, I have consulted the Registrar who has advised me that he stands by his Decision contested by Šešelj and agrees with this approach.

4. In his Complaint, Šešelj says he has filed a complaint before the Dutch Bar Association with respect to his court assigned counsel, Mr. Van der Spoel, whom he refuses to recognise and does not want as his counsel. He claims that on 2 March 2006, the head of the expert team assisting him in the preparation of his defence, Mr. Tomislav Nikolić, received a registered letter advising that the Disciplinary Council of the Dutch Bar Association would hold a public hearing on his complaint on

¹ Complaint Against Information – Decision Denying Permission to Professor Vojislav Šešelj’s Legal Representatives to Visit the Detainee, 26 April 2006 (“Complaint”).

² IT/38/Rev. 9, 10 October 2005.

³ Letter of 30 March 2006, from Sebastian van de Vliet, Head of the Office for Legal Aid and Detention Matters (“Decision”).

⁴ Complaint, p. 12.

⁵ Rule 80 of the Rules of Detention.

⁶ Rule 81 of the Rules of Detention.

⁷ Rule 84 of the Rules of Detention.

3 April 2006. Šešelj assigned Mr. Karasić and Mr. Vučić to act as his legal representatives before the Disciplinary Council. He then advised the ICTY of his decision, and requested permission for his self-appointed legal representatives to visit him in relation to this matter on 3 and 4 April 2006.⁸

5. Šešelj claims that he received a Decision from the Registrar refusing the requested visit on the basis that his legal representatives did not meet the conditions required of legal representatives appearing before the International Tribunal, and Mr. Vučić had addressed the media on previous occasions with respect to matters related to his case before the International Tribunal.⁹

6. In order to properly consider Šešelj's Complaint, I asked the Registrar to provide me with a copy of the Decision sent to Šešelj. In that Decision, the Registrar advises Šešelj that it has contacted the Raad van Discipline Board and it confirmed that the hearing previously scheduled for 3 April 2006 was postponed. I note that in his Complaint, Šešelj acknowledges that the hearing was postponed.¹⁰ The Registrar states that due to this postponement, it would not permit the visit requested on 3 and 4 April 2006, on the basis that Mr. Karasić and Mr. Vučić were not otherwise eligible to engage in privileged communications with Šešelj. The Registrar advised that if Šešelj wished to meet with a legal representative prior to any future scheduled hearing before the Raad van Discipline Board, he would be permitted to do so provided two conditions were fulfilled. The first is that he execute a power of attorney authorising a person to act on his behalf before the Raad van Discipline Board. The second is that the person be someone eligible to engage in privileged communications with him. With respect to this second condition, the Registrar advised that the legal representative would have to meet the following requirements:

- Be admitted to the practice of law or a university professor of law;
- Have not been found guilty in relevant criminal proceedings
- Have not engaged in conduct whether in pursuit of his or her profession or otherwise which is dishonest or otherwise discreditable to a counsel, prejudicial to the administration of justice, or likely to diminish public confidence in the International Tribunal or the administration of justice, or otherwise bring the International Tribunal into disrepute;
- Have not provided false or misleading information in relation to his or her qualifications and fitness to practice or failed to provide relevant information;
- Have not had an interest in divulging confidential information; and

⁸ Complaint, pp. 7-8.

⁹ *Ibid.*, p. 8.

¹⁰ Complaint, p. 11.

- Have signed an undertaking prepared by the Registry consenting to represent Šešelj before the Raad van Discipline Board and agreed to abide by the Rules of Detention and act consistently with the Statute of the Tribunal, the Rules of Procedure and Evidence, the Code of Professional Conduct for Counsel Appearing Before the International Tribunal, and any other Rules and Regulations of the Tribunal and all applicable judicial orders.

Finally, the Registrar stated in the Decision that it had previously found that Mr. Vučić's previous contacts with the media made him ineligible to engage in privileged communications with Šešelj.¹¹

7. In his Complaint, Šešelj claims that the fact that the hearing was postponed was no basis for the visit to be refused,¹² and that the Registrar has no right to impose conditions upon legal representatives engaged by him to represent him before the Disciplinary Council of the Dutch Bar Association. He claims that the imposition of these conditions is a violation of his rights to receive visits under the Rules of Detention and that his legal representatives should be permitted to visit him so that he can instruct them to represent him "in his entirely personal affairs outside the ICTY".¹³ He says that in requesting that they be permitted to visit him for the purpose of representing him before the Disciplinary Council of the Dutch Bar Association, "he did not insist on their being given privileged status since the issues to be discussed with the legal representatives were not to be related to proceedings before the ICTY...but with what the legal representatives would have to point out...in the case initiated by the complaint filed with the Disciplinary Council of the Dutch Bar Association".¹⁴ Šešelj states that as he wishes to consult with them solely for this purpose, they do not have to meet the conditions required of counsel appearing before the International Tribunal.¹⁵ Šešelj further claims that the refusal to allow the visit for this purpose is a violation of his human rights,¹⁶ and that "no-one in the ICTY has the right to ban legal representatives from appearing before the media and particularly not when it has to do with disciplinary proceedings before the Disciplinary Council of a Bar Association".¹⁷

8. Having considered Šešelj's Complaint, I am not satisfied that the Registrar erred in refusing to allow the visits by Mr. Karasić and Mr. Vučić to take place on 3 or 4 April 2006. The hearing before the Disciplinary Council of the Dutch Bar Association was no longer scheduled to take place on 3 April 2006; thus, no prejudice was suffered by Šešelj in not receiving a visit on those days.

¹¹ Decision.

¹² Complaint, p.11

¹³ *Ibid.*, pp. 8-9.

¹⁴ *Ibid.*, p. 11.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p.10.

However, I note that the Registrar's Decision was not only due to the cancellation of the scheduled hearing before the Disciplinary Council, but also due to the fact that in order to authorise the visit, the Registrar needed to be satisfied that the persons identified by Šešelj as his legal representatives for this hearing were persons qualified to represent his interests before the Disciplinary Council. As Šešelj identified Mr. Karasić and Mr. Vučić as his legal representatives for the purpose of those proceedings, I am also not satisfied that the Registrar erred by imposing the condition that Šešelj sign a power of attorney giving those persons the legal authority to represent him. However, with regard to the condition that those persons verify their qualifications as legal representatives for the purpose of permitting Šešelj to engage in privileged communications with them, I note that persons appearing before the Disciplinary Council are not required to be legally qualified. In these particular circumstances, upon Šešelj's representation that while he seeks to have Mr. Karasić and Mr. Vučić appear as his legal representatives for purposes of the Disciplinary Council hearing, he does not wish to have privileged communications with them. In these circumstances, the Registrar should reconsider its condition that in order to meet with Šešelj for this purpose, Mr. Karasić and Mr. Vučić meet certain qualifications normally required for legal counsel.

9. With respect to Šešelj's contention that the refusal of the requested visit amounted to an infringement of his human rights, was in breach of the Rules of Detention, and that the International Tribunal cannot ban persons from appearing before the media, I am not satisfied that this is the case. Rule 61 of the Rules of Detention governs the rights of detainees to receive visits and the relevant provisions provide as follows:

Rule 61

A. Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rules 64 and 64*bis* and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar may impose. Such restrictions and supervision must be necessary in the administration of the interests of justice or the security and good order of the host prison and the Detention Unit.

B. The Registrar shall refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information, which may be subsequently reported in the media. Rule 64*bis*(C) shall apply *mutatis mutandis* to decisions taken by the Registrar under this Sub-Rule.

Rules 64 and 64*bis* referred to above allow for such visits to be restricted in certain circumstances. Rule 64 permits the Prosecutor to request the Registrar "in cases of emergency" to prohibit or

¹⁷ *Ibid.*, p. 11.

regulate contacts between a detainee and others if the Prosecutor has reasonable grounds to believe that the contact is for the purposes of organising an escape, could prejudice proceedings or investigations, be harmful to the detainee or others, or be used by the detainee to breach a Judge or Chamber's order. Rule 64bis provide that use of communication visits by a detainee for the sole purpose of contacting the media directly or indirectly shall be subject to the approval of the Registrar.


10. From the above provisions, and in particular, Rule 61(B), the Registrar can refuse a visit if he has reason to believe that the purpose of the visit is to obtain information subsequently to be reported to the media. However, this does not seem to be the basis of the Registrar's refusal here. The Registrar advised Šešelj that it considered Mr. Vučić unsuitable to act as a legal representative because "the Registrar has previously found that his contacts with the media make him ineligible to engage in privileged communications with you".¹⁸ Accordingly, as Šešelj claims that he does not request privileged communications with Mr. Vučić, the Registrar should reconsider granting permission to Mr. Vučić to visit Šešelj for the purpose of receiving non-privileged instructions to act as his legal representative before the Disciplinary Council of the Dutch Bar Association.

11. In light of the above, and noting in particular that persons appearing before the Disciplinary Council of the Dutch Bar Association are not required to be legally qualified, and Šešelj's advice that he does not seek to engage in privileged communications with Mr. Karasić and Mr. Vučić in instructing them to appear on his behalf before the Disciplinary Council of the Dutch Bar Association, the Registrar is directed to reconsider its condition that Mr. Karasić and Mr. Vučić satisfy it that they are qualified to legally represent Šešelj. Should Šešelj have reason to make complaint about that reconsideration, he is directed to adhere fully to the complaints procedure set out in Rules 80 to 84 of the Rules of Detention and make his complaint directly to the Registrar.

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

¹⁸ Decision.

Done this 25th day of May 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]