

**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: IT-03-67-PT

Date: 25 September 2006

Original: English

IN TRIAL CHAMBER I

**Before: Judge Alphons Orie, Presiding
Judge Patrick Robinson
Judge Bakone Justice Moloto**

Registrar: Mr Hans Holthuis

Order of: 25 September 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

ORDER REGARDING OPENING STATEMENTS

Office of the Prosecutor

**Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemer**

Assigned Counsel for Vojislav Šešelj

Mr David Hooper

TRIAL CHAMBER I 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”);

NOTING the Chamber’s “Decision on Assignment of Counsel” of 21 August 2006, and the assignment of Mr David Hooper as Counsel for the Accused on 29 August 2006;

NOTING that in the “Decision on the Assignment of Counsel” the Trial Chamber ordered that “the Accused’s participation in the proceedings will be through Counsel unless, having heard from Counsel, the Chamber determines otherwise”;

NOTING the Scheduling Order filed on 18 September 2006, by which the trial in the case of *Prosecutor v. Vojislav Šešelj* (Case no. IT-03-67) will commence on 2 November 2006;

NOTING that in the Scheduling Order the Chamber indicated that “[a] further Order regarding opening statements and the presentation of evidence shall be issued in due course”;

RECALLING that pursuant to Rule 84 of the Tribunal’s Rules of Procedure and Evidence (“Rules”) each party may make an opening statement before the presentation of evidence by the Prosecutor but that the Defence can elect to make its opening statement at the end of the Prosecution’s case and before the commencement of its case;

RECALLING further that Rule 84 *bis* of the Rules provides:

(A) After the opening statements of the parties, or if the defence elects to defer its opening statement pursuant to Rule 84, after the opening statement of the Prosecutor, if any, the accused may, if he or she so wishes, and the Trial Chamber so decides, make a statement under the control of the Trial Chamber. The accused shall not be compelled to make a solemn declaration and shall not be examined about the content of the statement.

(B) The Trial Chamber shall decide on the probative value, if any, of the statement.

CONSIDERING that for the purposes of clarifying matters related to the commencement of trial, the Trial Chamber would like to know from the parties whether they intend to make an opening statement and from the Defence whether it intends to defer its opening statement until the conclusion of the Prosecution’s presentation of evidence;

CONSIDERING that Rule 84 *bis* of the Rules applies to any accused that appears before a Trial Chamber of this Tribunal and it applies whether the accused is represented or not;

CONSIDERING further that in its Decision on Assignment of Counsel of 21 August 2006 the Trial Chamber did not intend to preclude the possibility of Mr Vojislav Šešelj making a statement under Rule 84 *bis* of the Rules;

FOR THE FOREGOING REASONS, and pursuant to Rules 84 and 84 *bis* of the Rules,

THE TRIAL CHAMBER BY MAJORITY (JUDGE MOLOTO DISSENTING IN PART) HEREBY

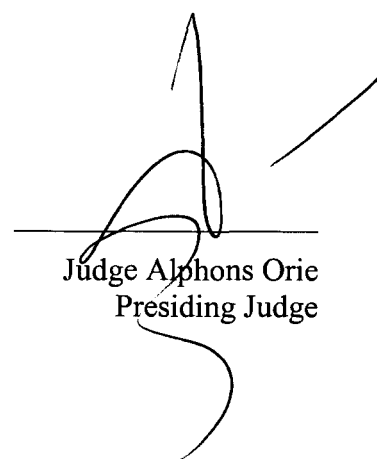
INVITES the Prosecutor to inform the Trial Chamber no later than one week prior to the commencement of trial as to whether she intends to make an opening statement;

INVITES the Defence to inform the Trial Chamber no later than one week prior to the commencement of trial as to whether it intends to make an opening statement and, if so, whether it will defer making the opening statement until after the conclusion of the presentation of Prosecution's evidence;

ORDERS that the Accused may, if he so wishes, make a statement at the trial session scheduled on 2 November 2006, which statement shall follow the opening statement of the parties, unless the parties choose to forgo or defer opening statements, in which case the Accused may nonetheless make a statement.

Judge Moloto attaches a dissenting opinion to this Order.

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



Judge Alphons Orié
Presiding Judge

Dated this twenty-fifth day of September 2006
At The Hague
The Netherlands

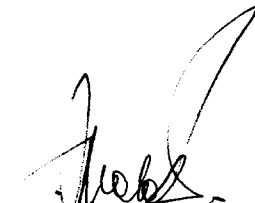
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Dissenting Opinion of Judge Moloto

1. I harbour considerable concerns about the Trial Chamber's majority decision to allow Mr. Vojislav Seselj ("Accused") to make a statement pursuant to Rule 84 *bis* of the Tribunal's Rules of Procedure and Evidence ("Rules") and its effect on the Chamber's Decision on Assignment of Counsel of 21 August 2006 ("Decision").
2. In the Decision, the Trial Chamber removed the right of the Accused to self-representation. The Chamber made a broad, all encompassing order that "the Accused's participation in the proceedings will be through Counsel unless, having heard from Counsel, the Chamber determines otherwise". This order, in my view, regulates all conduct of the Accused acting in the capacity of a party to the case against him, including making a statement under the Rule 84 *bis* (A) of the Rules. It deserves mention that what the Decision does not regulate, however, are situations where the Accused is not acting as a party to the case, such as when the Accused testifies as a witness. Significantly, should that situation arise, the Accused will be under the tight control of the questioner, hence answer only to questions put to him.
3. The Chamber's "Order Regarding Opening Statements" ("Order") will undermine the Decision, in particular because the Order permits the participation of the Accused in part of the proceedings without the Chamber first hearing from Counsel. In so doing, the Order sends an unclear message regarding the future application of the Decision. It is not sufficient to say that in deciding to assign Counsel to the Accused the Chamber did not intend to prevent the Accused from making a statement under Rule 84 *bis* (A); it was not expressly mentioned or implied.
4. I would like to emphasise that preventing the Accused in the present case from making a statement is not contrary to his fair trial rights. First, Rule 84 *bis* (A) cannot be conceived as creating a "right" of the Accused to make a statement. The wording of Rule 84 *bis* (A) clearly indicates that the provision is merely permissive and that the Chamber may, in the exercise of its discretionary power, not permit the Accused to make a statement. Second, it is not unlawful or contrary to the Accused's right to self-representation to limit that right in certain circumstances. As demonstrated in the Decision, the requisite circumstances clearly prevail in the present case. If a right provided for in the Statute may be restricted, it is illogical to conclude that the

permissive Rule 84 *bis* (A) of the Rules (subordinate legislation) could in any way oblige the Chamber to allow the Accused to make a statement.

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


Judge Bakone Justice Moloto

Dated this twenty-fifth day of September 2006
At The Hague
The Netherlands

[Seal of the Tribunal]