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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-T

Date:

18 December 2006

Original:

English

IN TRIAL CHAMBER I

Before:

**Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle**

Registrar:

Mr. Hans Holthuis

Decision of:

18 December 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON THE STATUS OF DECISIONS ISSUED
AND PENDING MOTIONS**

The Office of the Prosecutor:

**Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemer
Ms Melissa Pack
Ms Joanne Motoike**

The Accused:

Mr Vojislav Šešelj

Introduction

1. On 21 August 2006, the Trial Chamber issued its Decision on Assignment of Counsel (“First Decision”) whereby it imposed Counsel on the Accused.¹ Subsequently, the Registrar appointed Mr. David Hooper and Mr. Andreas O’Shea as Counsel and Co-Counsel, respectively.²
2. On 20 October 2006, the Appeals Chamber reversed the First Decision (“First Appeal Decision”).³ Following the restoration of the Accused’s self-represented status, on 25 October 2006, the Trial Chamber ordered the Registrar to appoint Standby Counsel to the Accused and accordingly, the Registrar appointed Mr. Hooper and Mr. O’Shea as Standby Counsel and Co-Counsel, respectively.⁴
3. At the Pre-Trial Conference on 27 November 2006, the Trial Chamber rendered an oral decision assigning the Standby Counsel to permanently represent the Accused (“Second Decision”).⁵ The Trial Chamber requested the Registry to appoint an Independent Counsel to take any necessary action in relation to an appeal of the Second Decision.⁶ Accordingly, on 30 November 2006, the Acting Deputy Registrar assigned Mr. Van der Spoel as Independent Counsel.⁷
4. On 4 December 2006, Independent Counsel requested certification to appeal the Second Decision, which was granted by the Trial Chamber on 5 December 2006.⁸ On 8 December 2006, the Appeals Chamber overturned the Second Decision (“Second Appeal Decision”).⁹ In its decision, the Appeals Chamber examined the background of the Second Decision, in particular the Trial Chamber’s Order of 25 October 2006. The Appeals Chamber held that the Trial Chamber had abused its discretion by “immediately ordering the imposition of standby counsel, without first establishing additional obstructionist behaviour on the part of Šešelj warranting that imposition, with the clear possibility to take over the proceedings.”¹⁰

¹ Decision on Assignment of Counsel, filed 21 August 2006.

² Decision by the Deputy Registrar, filed 30 August 2006.

³ Decision on Appeal Against the Trial Chamber’s Decision on Assignment of Counsel, filed 20 October 2006.

⁴ Order Concerning Appointment of on Standby Counsel and Delayed Commencement of Trial, filed 25 October 2006; Decision [by the Deputy Registrar re Assignment of Standby Counsel], filed 30 October 2006.

⁵ T. 824-825 and Reasons for Decision (No. 2) on Assignment of Counsel, filed 27 November 2006.

⁶ Reasons for Decision (No. 2) on Assignment of Counsel, filed 27 November 2006, para. 14.

⁷ Decision by the Acting Deputy Registrar assigning Mr. van der Spoel as independent counsel, filed 30 November 2006.

⁸ Decision on Request for Certification to Appeal Decision (No. 2) on Assignment of Counsel, filed 5 December 2006.

⁹ Decision on Appeal Against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, filed 8 December 2006.

¹⁰ Ibid., para. 27.

This was, according to the Appeals Chamber, “a provocative move, which [the Accused] interpreted as a violation of the [First] Appeal Decision”.¹¹

5. Consequently, the Appeals Chamber nullified the opening of the proceedings and ordered that the trial should restart.¹² The Appeals Chamber also decided that “[a]ll trial proceedings in this case following the order of the Trial Chamber directing the Registry to appoint standby counsel are set aside [and that] [t]he trial [...] is suspended until such time as he is fit enough to fully participate in the proceeding as a self-represented accused.”¹³

6. In light of the Second Appeal Decision, the Trial Chamber will hereby clarify the status of the pending motions and decisions taken during the relevant period, as well as future motions.

Status of decisions issued and pending motions

7. The Trial Chamber has considered the status of decisions issued between 25 October 2006 and 8 December 2006 and finds, in light of the Second Appeal Decision, that those decisions in which a response to the motion submitted by counsel has been considered, are nullified. Two such decisions have been issued by the Trial Chamber, namely the Oral Decision on Protective Measures for Witness VS-017 of 22 November 2006¹⁴ and the Oral Decision on Video-Conference Link for VS-053 of 27 November 2006.¹⁵ The Trial Chamber hereby declares that the responses by Counsel will be disregarded. The motions underlying these decisions shall remain pending unless withdrawn. The time-limit, in accordance with Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”), to respond to these motions will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused or when all underlying motions are served in translation on the Accused, if this is at a later date. The Accused may request additional time to file a response, if he so wishes.

8. Considering the Second Appeal Decision, and in particular the potential impact on the Accused’s physical condition caused by his decision to refuse any food and medication since 10 November 2006, the Trial Chamber further finds it appropriate to review the status of the decisions served in translation on the Accused between 10 November 2006 and 8

¹¹ Ibid., para. 23.

¹² Ibid., para. 29.

¹³ Ibid., para.30.

¹⁴ For the response and the decision, see T. 808-810.

December 2006. The time-limit, in accordance with Rule 73 (C) of the Rules, to request certification to appeal these decisions will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused. The Accused may request additional time to file a request for certification, if he so wishes.

9. There are a number of decisions issued by the Trial Chamber, which until this day have not been served in translation on the Accused. The time-limit to request certification to appeal these decisions will also start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused, or when these decisions are served in translation on the Accused, if this is at a later date. Again, the Accused may request additional time to file a request for certification, if he so wishes.

10. On 2 October 2006, the Trial Chamber issued the Decision on Prosecution's Motion Concerning Filing of an Expert Report, with Confidential and Ex Parte Annexes. A translation was served on the Accused on 17 October 2006 when the Accused was represented by Counsel. After the Accused's right to self-representation was restored in the First Appeal Decision on 20 October 2006, the Trial Chamber did not give the Accused a new time-limit to file a request for certification to appeal. For this reason, the time-limit to request certification will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused. The Accused may request additional time to file a request for certification, if he so wishes.

11. On 22 November 2006, the Trial Chamber decided to grant certification to appeal the Decision on Form of Disclosure, filed 4 July 2006.¹⁵ The Accused, who had chosen not to be present at the Status Conference during which the certification was granted, was provided with recordings of the session on the same day. As of today, the Accused has not appealed the Decision of 4 July 2006 and the time-limit set out in Rule 73 (C) of the Rules expired in a time-period during which the Accused's physical condition might have been affected by his

¹⁵ For the underlying motions, responses and the decision, see T. 825-828. This decision was partly based on a response by Counsel (T. 792) and partly on a response by the Accused, in a written submission filed 21 November 2006.

¹⁶ T. 805-806. For procedural history, see Urgent Order to the Dutch Authorities regarding Health and Welfare of the Accused, filed 6 December 2006, para. 4.

decision to refuse food and medication.¹⁷ The Trial Chamber notes that any variation of this time-limit lies within the discretion of the Appeals Chamber.

12. The Trial Chamber considers that Prosecution motions in this case which the Accused has not responded to, generally refer to motions to which the Defence responses were due after 21 August 2006¹⁸ (see Annex to this Decision). The time-limit, in accordance with Rule 126 *bis* of the Rules, to respond to these motions will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused or when these motions are served in translation on the Accused, if this is at a later date. The Accused may request additional time to file a response, if he so wishes. For one Prosecution motion, the Accused's response was due before 21 August 2006, while the Accused was representing himself.¹⁹ Since a response to this motion was due on 10 August 2006 and no response was filed by the Accused, the Trial Chamber will consider the motion without a Defence response. A decision on this motion will be issued in due course.

13. The Trial Chamber notes that some motions filed by the Accused still remain pending at this moment.²⁰ There are also Prosecution motions pending to which the Accused has already responded.²¹ Decisions on these motions will be issued in due course.

14. For Prosecution motions filed between 8 December 2006 and the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused, the time-limit, in accordance with the Rules, to respond to these motions will start running from the later date or when the motions are served in translation on the Accused if this is at a later date. The Accused may request additional time to file a response, if he so wishes.

¹⁷ See para. 8.

¹⁸ The reason why the Trial Chamber has chosen 21 August 2006 as the crucial date is that this was when the Accused first lost his self-representing status and that it was never clarified to the Accused during the second period of self-representation (20 October - 27 November 2006) whether new time-limits for responses would be set or whether the old ones were still running.

¹⁹ Prosecution's Confidential Eighth Motion for Protective Measures for Witnesses during the Pre-Trial and Trial Phases with Ex Parte and Confidential Annexes A, B, C, D and E: filed 7 July 2006, translation served on the Accused on 27 July 2006.

²⁰ Accused's oral request to sit in front row, 3 November 2006 (T. 681-693); Accused's oral request for three sitting days per week during trial, 19 May 2006 (T. 506-507); and Request by Professor Vojislav Šešelj for Approval to File Interlocutory Appeal against Eight Oral Decisions of Trial Chamber I, 8 November 2006, filed 5 December 2006.

²¹ Prosecution's Confidential Seventh Motion for Protective Measures for Witnesses during the Pre-Trial and Trial Phases with Ex Parte and Confidential Annexes A, B, C and D, filed 9 May 2006 and Prosecution Motion for Admission of Transcripts and Written Statements in Lieu of Viva Voce Testimony Pursuant to Rule 92 *bis* with Confidential and partly Ex Parte Annexes, filed 6 March 2006.

15. The time-limit to request certification to appeal any decision by the Trial Chamber served in translation on the Accused between the date of filing of this decision and the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused, will start running from the later date or when the decisions are served in translation on the Accused, if this is at a later date. The Accused may request additional time to file a response, if he so wishes.

16. The Trial Chamber notes that all decisions issued by the Trial Chamber not referred to above, remain valid.

17. The Trial Chamber hereby:

DECIDES to disregard the responses of Counsel to the underlying motions for the Oral Decision on Protective Measures for Witness VS-017 of 22 November 2006 and the Oral Decision on Video-Conference Link for VS-053 of 27 November 2006, which are both nullified in accordance with the Second Appeal Decision. The time-limit to respond to these motions will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused or when all underlying motions are served in translation on the Accused, if this is at a later date;

DECIDES that the time-limit to request certification to appeal decisions served on the Accused between 10 November 2006 and 8 December 2006 will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused;

DECIDES that the time-limit to request certification to appeal decisions issued by the Trial Chamber, which until this day have not been served in translation on the Accused, will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused, or when these decisions are served in translation on the Accused, if this is at a later date;

DECIDES that the time-limit to request certification to appeal the Decision on Prosecution's Motion Concerning Filing of an Expert Report, with Confidential and Ex Parte Annexes, issued 2 October 2006, will start running from the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused;

DECIDES that new time-limits to respond to the motions listed in the Annex will start running from the date when the Trial Chamber has found that the Accused is fit enough to

fully participate in the proceeding as a self-represented Accused or when these motions are served in translation on the Accused, if this is at a later date;

DECIDES that the time-limit for Defence responses to Prosecution motions filed between 8 December 2006 and the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused, will start running from the later date or when these motions are served in translation on the Accused, if this is at a later date;

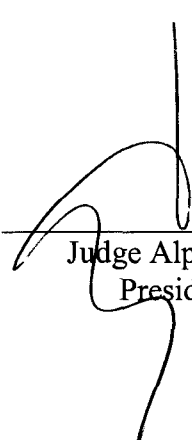
DECIDES that the time-limit to request certification to appeal any decision by the Trial Chamber served in translation on the Accused between the date of filing of this decision and the date when the Trial Chamber has found that the Accused is fit enough to fully participate in the proceeding as a self-represented Accused, will start running from the later date or when the decisions are served in translation on the Accused, if this is at a later date;

INSTRUCTS the Registrar to regularly update the Trial Chamber on the Accused's medical condition;

INVITES the Accused to inform the Trial Chamber when he considers himself to be fit enough to fully participate in the proceeding as a self-represented Accused.

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

Dated this eighteenth day of December 2006
The Hague
The Netherlands



Judge Alphons Orie
Presiding Judge

[Seal of the Tribunal]

ANNEX

Defence response due after 21 August 2006:

1. Prosecution's Motion for Judicial Notice on Adjudicated Facts, with Annex: filed 23 May 2006, translation served on the Accused on 30 June 2006 (new time-limit to respond was set to 1 September 2006²²).
2. Prosecution's Submission of the Expert Statement of Dr. Osman Kadić Pursuant to Rule 94 *bis*: filed 12 July 2006, translation served on the Accused on 31 July 2006.
3. Prosecution's Submission of the Expert Statement of Professor Dr. Zoran Stanković Pursuant to Rule 94 *bis*: filed 12 July 2006, translation served on the Accused on 4 August 2006.
4. Prosecution's Submission of the Expert Report of Ewa Tabeau Pursuant to Rule 94 *bis* and Motion for the Admission of Transcripts Pursuant to Rule 92 *bis* (D): filed 13 July, translation served on the Accused on 4 August 2006.
5. Prosecution's Submission of the Expert Report of Professor Dr. Davor Strinović Pursuant to Rule 94 *bis* and Motion for the Admission of Transcripts Pursuant to Rule 92 *bis* (D): filed 13 July 2006, translation served on the Accused on 31 July 2006.
6. Prosecution's Submission of the Expert Report of Colonel Ivan Grujić Pursuant to Rule 94 *bis* and Motion for the Admission of Transcripts Pursuant to Rule 92 *bis* (D): filed 14 July 2006, translation served on the Accused on 4 August 2006.
7. Prosecution's Motion to take Judicial Notice of Documentary Evidence Pursuant to Rule 94 (B) with Annex A: filed 14 July 2006, translation served on the Accused on 9 August 2006.
8. Prosecution Motion for the Admission of Written Statements of Witnesses VS-018 and VS-052 Pursuant to Rule 89(F) with Confidential Annexes: filed 11 September 2006 (not translated).
9. Prosecution Motion for the Admission of Written Statements of Witnesses VS-011 and VS-015 Pursuant to Rule 89(F) with Confidential and Ex Parte Annexes: filed 15 September 2006 (not translated).
10. Prosecution's Confidential Submission of Revised and Redacted Annexes to Seventh and Eight Motion for Protective Measures: filed 20 September 2006 (not translated).
11. Prosecution's Second Motion for Admission of Written Statements and Transcripts with Confidential and partly Ex Parte Annexes: filed 2 October 2006 (not translated).
12. Prosecution's Motion for the Admission of Written Statement of Witness VS-017 Pursuant to Rule 92*ter* with Confidential Annex A: filed 3 October 2006 (not translated).
13. Prosecution's Addendum and Corrigendum to Prosecution's Motion for Admission of Transcripts and Written Statements in Lieu of Viva Voce Testimony Pursuant to Rule 92 *bis* with Confidential Annex: filed 3 October 2006 (not translated).
14. Prosecution's Motion for Variation of Disclosure Order: filed 5 October 2006, translation served on the Accused on 21 November 2006.
15. Prosecution's Motion for Admission of Written Statements Pursuant to Rule 92*ter* – Hrtkovci Crime Base with Confidential and partly Ex Parte Annexes: filed 5 October 2006 (not translated).
16. Prosecution's Addendum to "Prosecution's Second Motion for Admission of Transcripts and Written Statements" with Confidential and partly Ex Parte Annexes: filed 16 October 2006 (not translated).

²² Decision Regarding Deadlines for Responses to Motions on Expert witnesses and Adjudicated facts, 12 July 2006.

17. Prosecution's Additional Addendum and Corrigendum to "Prosecution's Motion for Admission of Transcripts and Written Statements in Lieu of Viva Voce Testimony Pursuant to Rule 92 *bis*" with Confidential Annexes: filed 17 October 2006 (not translated).
18. Prosecution Motion for the Admission of Addendum to Written Statement of Witness VS-017 Pursuant to Rule 92 *ter* with Confidential Annex A: filed 19 October 2006, translation served on the Accused on 20 November 2006.
19. Prosecution Motion for the Admission of Written Statement of Witness VS-050 Pursuant to Rule 92 *ter* with Confidential and Ex Parte Annex: filed 26 October 2006 (not translated).
20. Prosecution's Motion for the Admission of Written Statement of Witness VS-1119 Pursuant to Rule 92 *ter* with confidential Annex: filed 26 October 2006, translation served on the Accused on 2 November 2006.
21. Prosecution Motion for the Admission of Written Statement of Witness VS-031 Pursuant to Rule 92 *ter* with Confidential and Ex Parte Annex: filed 27 October 2006 (not translated).
22. Prosecution Submission of Second Addendum to the Written Statement of Witness VS-017 with Confidential Annex A: filed 15 November 2006 (not translated).
23. Prosecution's Confidential Motion for Testimony of Witness VS-1141 to be heard via Video-Conference Link with Confidential Annex: filed 16 November 2006 (not translated).
24. Prosecution's Confidential Motion for Protective Measures for Witness VS-1141 during the Pre-Trial and Trial Phases with Confidential and Ex Parte Annex: filed 16 November 2006 (not translated).
25. Prosecution's Confidential Addendum to Motion for Testimony of Witness VS-1141 to be heard via Video-Conference Link with Confidential Annex: filed 27 November 2006 (not translated).
26. Prosecution's Second Motion to take Judicial Notice of Documentary Evidence Pursuant to Rule 94 (B) with Annex: filed 28 November 2006 (not translated).
27. Prosecution's Request for Postponement of Video-Conference Link for the Testimony of Witness VS-053: filed 29 November 2006 (not translated).
28. Prosecution's Motion for Re-Consideration of Trial Chamber's Decision dated 22 November 2006: filed 1 December 2006 (not translated).
29. Prosecution's Urgent Motion Regarding the Testimony of Witness VS-017 and Related Exhibits with Confidential Annexes A & B: filed 1 December 2006 (not translated).