

IT-03-67-PT
D17133 - D17129
05 MARCH 2007

17133
A'

**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: 5 March 2007
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President
Registrar: Mr. Hans Holthuis
Decision of: 5 March 2007

THE PROSECUTOR

v

VOJISLAV ŠEŠELJ

**DECISION ON APPEAL AGAINST
REGISTRY DECISION OF 16 JANUARY 2007**

Counsel for the Prosecutor:

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

The Accused:

Mr. Vojislav Šešelj

FU

1. On 30 January 2007, Vojislav Šešelj (“Šešelj”) filed before me his “Appeal by Professor Vojislav Šešelj Against the Registry Decision of 16 January 2007” (“Appeal”).¹ In his Appeal, Šešelj requests that I reverse a decision of the Registry by letter dated 16 January 2007 (“Decision”) returning ten of his submissions to him because they did not meet the 800-word limit and order the Registry to file the said submissions in his case file.² The Deputy Registrar of the International Tribunal filed a submission in response to the Appeal on 20 February 2007 pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”).³

Submissions

2. In his Appeal, Šešelj claims that the Registry Decision was unlawful on the basis of five grounds. Šešelj first argues that the Decision was an independent one acting on a matter falling exclusively within the remit of the Trial Chamber, in other words, whether to accept and file an accused’s submissions or return submissions to an accused.⁴ He claims that although the Registry stated in its Decision that the ten submissions were being returned on instruction of the Trial Chamber, no details of the decision or order were given. Thus, he concludes that the Decision must have been made on the basis of an oral order from the Trial Chamber. However, he claims that such an oral order has to be followed by a written decision or order from the Trial Chamber so that he could file an interlocutory appeal against it with the Appeals Chamber.⁵ Because the Trial Chamber failed to do so, any oral order was not properly adopted, and therefore the Registry’s Decision to return his submissions was an independent one beyond the Registry’s competence.⁶

3. Under Šešelj’s second and third grounds, he contests the Registry Decision’s reference to the requirements of the Practice Direction on the Length of Briefs and Motions (“Practice Direction”).⁷ Šešelj argues that the Registry Decision errs by treating the Practice Direction as a generally binding enactment. He submits that anything stated in the Practice Direction is binding only for the internal work of the International Tribunal’s organs and there are no

¹ Translation of the Appeal was filed on 7 February 2007.

² Appeal, p. 5.

³ “Submission of the Deputy Registrar on ‘The Appeal by Professor Vojislav Šešelj Against the Registry Decision of 16 January 2007’”, 20 February 2007 (“Response”).

⁴ Appeal, pp. 2, 3.

⁵ *Id.*, p. 2.

⁶ *Id.*, p. 5.

⁷ IT/184, Rev. 2, 16 September 2005.

imperative provisions concerning the work and conduct of an accused. In his view, this is so because the President of the International Tribunal must not violate the procedural rights of an accused in enacting a practice direction. Furthermore, Šešelj notes that there are no sanctions prescribed in the Practice Direction for failure to comply with its provisions. Thus, he argues that the Practice Direction can only be a recommendation to an accused regarding desirable conduct, and it may not be interpreted or applied as a general enactment encroaching on an accused's procedural rights guaranteed and protected by the Statute of the International Tribunal, which the Registry impermissibly did.⁸

4. Fourth, Šešelj contests the Registry Decision's reference to the Trial Chamber Decision on Filing of Motions.⁹ He claims that the Trial Chamber's Decision was unlawful and contrary to the Practice Direction in that it imposes an additional restriction on the length of Šešelj's submissions such that they must not exceed 800 words. In his view, this restriction is discriminatory and violates the principle of equality of the parties as the Prosecution has never been subject to any restrictions on the length of its motions. Furthermore, he claims that the Trial Chamber's Decision amounts to a prohibition on his guaranteed and protected rights to defend himself as it is impossible for him to adequately reply to the Prosecution's arguments and address relevant legal matters in 800 words.¹⁰

5. Finally, Šešelj claims that the Registry Decision violates the procedural rights of an accused in that it is unclear on what basis the Decision is made, whether the Trial Chamber Decision on Filing of Motions or the Practice Direction. Furthermore, the Decision introduces additional confusion by stating that no permission has been granted to Šešelj to exceed the page-limit for his submissions. Thus, Šešelj argues, the Registry was not in a position to adopt its Decision as the decision to allow a page-limit to be exceeded rests with the Trial Chamber.¹¹

Discussion

6. As a preliminary matter, I note that Šešelj does not cite to any provision in the Statute or the Rules of the International Tribunal for bringing his appeal before me and therefore, on

⁸ *Id.*, p. 3.

⁹ Šešelj notes that the Registry Decision dates the Trial Chamber's Decision as 26 June 2006 but that the Trial Chamber's Decision is actually dated 19 June 2006 and was filed on 22 June 2006. Appeal, p. 4.

¹⁰ Appeal, p. 4.

¹¹ *Id.*, pp. 4-5.

that basis, I may simply dismiss his Appeal without further consideration and will do so with respect to future such filings. Nevertheless, under my general power to supervise the activities of the Registry,¹² I have reviewed the Registry's Decision and find Šešelj's Appeal to be without merit. It is clear that the Registry's Decision to return his ten submissions was not done independently or beyond the competence of the Registry and was merely an administrative matter carried out on the basis of specific orders and instructions of the Trial Chamber. In returning Šešelj's submissions, the Registry Decision acted on the basis of the Trial Chamber's written Decision on Filing of Motions of 19 June 2006 ("Decision on Filing of Motions") wherein the Trial Chamber, under its obligation to ensure a fair and expeditious trial, ordered that Šešelj should limit his submissions to 800 words unless he obtained prior authorization from the Trial Chamber to exceed that word limit upon a showing of good cause.¹³ In the enforcement of its order, the Trial Chamber requested the Registry to return to Šešelj any submission that exceeded 800 words unless he had been granted prior authorization for the over-sized submission.¹⁴ In line with that request, the Registry sent its Decision and the ten submissions to Šešelj citing to the Decision on Filing of Motions.¹⁵ Furthermore, the Registry Decision was based upon the Trial Chamber's instruction to the Registry of 15 January 2007 in court to return Šešelj's ten submissions on grounds that they failed to meet requisite word limits set by the Trial Chamber and that no permission had been granted to Šešelj for the over-sized filings.¹⁶ Šešelj's argument that the Trial Chamber's oral order had to be put in writing in order for it to be a relied upon in the Registry Decision has no basis in the International Tribunal's Rules.

7. Finally, to the extent that Šešelj appeals the Trial Chamber's interpretation and application of the Practice Direction in its decisions to set word limits for his submissions, this is a matter that must be brought before the Appeals Chamber and not the President of the International Tribunal for resolution under the Rules of the International Tribunal. The same applies to Šešelj's arguments that the Trial Chamber's decisions are discriminatory and a violation of his right to build a proper defence.

8. On the basis of the foregoing reasons, Šešelj's Appeal is **DENIED**.

¹² Rule 19 of the Rules.

¹³ Decision on Filing of Motions, p. 3.

¹⁴ *Id.*, p. 4.

¹⁵ Although the Registry inadvertently provided the wrong date for the Trial Chamber's Decision, I do not find this typographical error to have invalidated the Registry Decision. It was clear to Šešelj which Trial Chamber Decision the Registry was acting under.

¹⁶ T. 803-804, 15 January 2007.

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

Done this 5th day of March 2007,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]