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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 the  
Former Yugoslavia since 1991

Case No. IT-03-67-  
AR73.5  
Date: 17 April 2007  
Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron

**Registrar:** Mr. Hans Holthuis

**Decision of:** 17 April 2007

**PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

**DECISION ON VOJISLAV ŠEŠELJ'S INTERLOCUTORY  
APPEAL AGAINST THE TRIAL CHAMBER'S DECISION ON  
FORM OF DISCLOSURE**

**The Office of the Prosecutor:**

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

**The Accused:**

Mr. Vojislav Šešelj

1. The Appeals Chamber 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of the “Interlocutory Appeal by Professor Vojislav Šešelj Against the Decision on Form of Disclosure Issued by Trial Chamber I on 4 July 2006” (“Interlocutory Appeal”) confidentially submitted by Vojislav Šešelj (“Mr. Šešelj”) on 1 February 2007.<sup>1</sup>

## I. BACKGROUND

2. On 4 July 2006, Trial Chamber I issued its “Decision on Form of Disclosure” (“Impugned Decision”), holding that while the Prosecution had an obligation to provide disclosure material under Rule 68(i) of the Tribunal’s Rules of Procedure and Evidence (“Rules”) in a language Mr. Šešelj understands, it was entitled to submit material provided under Rule 66(A) and (B) and Rule 68(i) of the Rules in electronic format “subject to the qualifications regarding assistance to the Accused”.<sup>2</sup> On the same date, Mr. Šešelj expressed his intention to apply for certification to appeal the Impugned Decision, but the Trial Chamber determined that no reasoned request was subsequently made as required under Rule 73(B) of the Rules and thus, no certification decision was issued by the Trial Chamber.<sup>3</sup>

3. On 10 November 2006, Mr. Šešelj began a hunger strike, demanding, *inter alia*, that he be provided with all Prosecution case documents in the Serbian language and in hard-copy format and that assigned Counsel be removed from the proceedings, making cessation of his hunger strike dependent upon fulfilment of these demands.<sup>4</sup>

4. In his Decision of 17 November 2006, the Deputy Registrar indicated that in accordance with the Impugned Decision, the Registry would offer adequate assistance to Mr. Šešelj by

<sup>1</sup> Confidential Interlocutory Appeal by Professor Vojislav Šešelj Against the Decision on Form of Disclosure Issued by Trial Chamber I on 4 July 2006, 1 February 2007, translation received on 14 February 2007. Having consulted the Registry, the Appeals Chamber notes that the reasons for the confidential issuance of the Registry decisions discussed in this Interlocutory Appeal no longer exist and that the Decision may therefore be issued publicly.

<sup>2</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Form of Disclosure, 4 July 2006, p. 9.

<sup>3</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Urgent Order to the Dutch authorities Regarding Health and Welfare of the Accused, 6 December 2006 (“Urgent Order Regarding Health and Welfare of the Accused”), para. 4. The Appellant sought to appeal the Impugned Decision directly to the Appeals Chamber in a submission of 31 July 2006, but the submission was returned since no certification had been granted. *Ibid.*

<sup>4</sup> *Ibid.*, paras 1, 3, 6.

providing a desktop computer, printing facilities, basic computer training and technical assistance.<sup>5</sup> Mr. Šešelj appealed the Decision before the President of the Tribunal.<sup>6</sup>

5. At the Status Conference of 22 November 2006, the Trial Chamber revisited the issue of certification of the Impugned Decision and decided that, in light of the significance of the Impugned Decision for Mr. Šešelj's right to have adequate time and facilities for the preparation of his defence, certification to appeal should be granted in accordance with Rule 73(B) of the Rules.<sup>7</sup>

6. Mr. Šešelj ended his hunger strike on 8 December 2006, after his demands were met by the Registry, which certified that "[a]ll documents to be delivered to you by the Court or the Prosecution (...) will be delivered to you in full, in Serbian, and in hard copy",<sup>8</sup> and after the Appeals Chamber fully restored his right to self-representation.<sup>9</sup> The Appeals Chamber also ordered the suspension of Mr. Šešelj's trial "until such time as he is fit enough to fully participate in the proceeding as a self-represented accused".<sup>10</sup>

7. In its Decision of 18 December 2006,<sup>11</sup> the Trial Chamber noted that "the time-limit set out in Rule 73(C) of the Rules [with respect to appealing the Impugned Decision] expired in a time-period during which Mr. Šešelj's physical condition might have been affected by his decision to refuse food and medication" and added that "any variation of this time-limit lies within the discretion of the Appeals Chamber".<sup>12</sup>

8. On 22 December 2006, the Prosecution requested the Trial Chamber to clarify whether the dispositions in the Impugned Decision still applied, and whether the Prosecution was still entitled to provide disclosure in electronic format.<sup>13</sup>

<sup>5</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision of Deputy Registrar, 17 November 2006, p. 4.

<sup>6</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Professor Vojislav Šešelj's Appeal Against the Registry Decision of 17 November 2006, 28 November 2006, translation received on 7 December 2006.

<sup>7</sup> Urgent Order Regarding Health and Welfare of the Accused, para. 4.

<sup>8</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Registry Submission Regarding Vojislav Šešelj's Appeal Against the Registry Decision of 17 November 2006 With Confidential Annexes, 18 December 2006 ("Registry's Submission of 18 December 2006"), paras 8-9. The Registrar's Decision of 8 December 2006 is appended as *Confidential Annex III* ("Registrar's Decision of 8 December 2006").

<sup>9</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.4, Decision on Appeal against the Trial Chamber's Decision (No.2) on Assignment of Counsel, 8 December 2006 ("Appeals Chamber's Decision of 8 December 2006"), para. 28.

<sup>10</sup> *Ibid.*, paras 29-30.

<sup>11</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on the Status of Decisions Issued and Pending Motions, 18 December 2006, para. 11.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, *Confidential* Prosecution Request for Clarification Regarding the Form of Disclosure and Filing Procedures, 22 December 2006, para. 5.

9. In his submission to the Trial Chamber of 9 January 2007,<sup>14</sup> Mr. Šešelj took note of the certification granted by Trial Chamber I on 22 November 2007, but indicated that he would not avail himself of the certification, having received written guarantees from the Registrar that all documents filed pursuant to the Rules of the Tribunal would be provided to him in full, in Serbian, and in hard copy.<sup>15</sup>
10. In his Decision of 10 January 2007, the President of the Tribunal dismissed Mr. Šešelj's appeal against the Deputy Registrar's Decision of 17 November 2006 as moot, in light of the Registrar's Decision of 8 December 2006.<sup>16</sup>
11. In his Decision of 24 January 2007, the Registrar clarified that he did not have the authority to speak for the Prosecution and that material disclosed to Mr. Šešelj by the Prosecution under the Tribunal's Rules "may not meet the conditions promised" in his Decision of 8 December 2006.<sup>17</sup>
12. In its Decision of 31 January 2007, the Trial Chamber informed Mr. Šešelj that he was mistaken in assuming that the Impugned Decision was annulled by the Registrar's Decision of 8 December 2006 and specified that the Impugned Decision "stands until such time as it is modified, withdrawn or reversed by an action of the Chamber itself or the Appeals Chamber".<sup>18</sup>
13. On 1 February 2006, Mr. Šešelj filed an appeal before the President of the Tribunal against the Registrar's Decision of 24 January 2007.<sup>19</sup> On that same day, Mr. Šešelj submitted the Interlocutory Appeal at issue in this Decision. On 21 February 2007, the Prosecution filed its Response.<sup>20</sup>

<sup>14</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Submission Number 240, 9 January 2007, translation received on 11 January 2007.

<sup>15</sup> *Ibid.*, pp. 1-2.

<sup>16</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Appeal Against the Registrar's Decision of 17 November 2006, 10 January 2007, p. 2, referring to Registry's Submission of 18 December 2006, para. 8.

<sup>17</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Confidential Decision from The Registrar, 24 January 2007 ("Registrar's Decision of 24 January 2007").

<sup>18</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, On the Continuing Effect of Certain Orders, 31 January 2007 ("Trial Chamber's Decision of 31 January 2007"), paras 4-5.

<sup>19</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Appeal of Professor Vojislav Šešelj Against the Decision of the Registrar of 24 January 2007, 1 February 2007, translation received on 13 February 2007; see also *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Confidential Submission of the Registrar on "Appeal of Professor Vojislav Šešelj Against the Decision of the Registrar of 24 January 2007", 8 March 2007.

<sup>20</sup> Confidential Prosecution Response to the Accused's Interlocutory Appeal Against the Decision on Form of Disclosure Issued by Trial Chamber I on 4 July 2006, 21 February 2007 ("Prosecution's Response").

## II. STANDARD OF REVIEW

14. It is well established in the jurisprudence of the Tribunal that Trial Chambers exercise discretion in many different situations, including “when deciding points of practice or procedure”.<sup>21</sup> The Impugned Decision, which ruled on the form of materials to be disclosed by the Prosecution under Rules 66 and 68 of the Rules, was such a discretionary decision to which the Appeals Chamber must accord deference. Such deference is based on the recognition by the Appeals Chamber of “the Trial Chamber’s organic familiarity with the day-to-day conduct of the parties and practical demands of the case.”<sup>22</sup> As previously held by the Appeals Chamber, “[w]here an appeal is brought from a discretionary decision of a Trial Chamber, the issue in that appeal is not whether the decision was correct, in the sense that the Appeals Chamber agrees with that decision, but rather whether the Trial Chamber has correctly exercised its discretion in reaching that decision”.<sup>23</sup> Thus, when challenging a discretionary decision, the moving party must establish that the Trial Chamber committed a “discernible” error resulting in prejudice to that party.<sup>24</sup> The Appeals Chamber will only overturn a Trial Chamber’s exercise of its discretion where it is found to be “(1) based on an incorrect interpretation of governing law; (2) based on a patently incorrect conclusion of fact; or (3) so unfair or unreasonable as to constitute an abuse of the Trial Chamber’s discretion.”<sup>25</sup>

<sup>21</sup> *Prosecutor v. Slobodan Milošević*, Case Nos. IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal From Refusal to Order Joinder, 18 April 2002 (“*Milošević* Decision on Joinder”), para. 3; see also *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.4, Decision on Prosecution Appeal Concerning the Trial Chamber’s Ruling Reducing Time for the Prosecution Case, 6 February 2007, para. 8; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-AR73.2, Decision on Joint Defence Interlocutory Appeal against the Trial Chamber’s Oral Decision of 8 May 2006 Relating to Cross-Examination By Defence and on Association of Defence Counsel’s Request for Leave to File an *Amicus Curiae* Brief, 4 July 2006 (“*Prlić* Decision on Cross-Examination”), p. 3; *Prosecutor v. Zdravko Tolimir et al.*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić’s Interlocutory Appeal Against the Trial Chamber’s Decision on Joinder of Accused, 27 January 2006 (“*Decision on Radivoje Miletić’s Interlocutory Appeal*”), para. 4; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel, 1 November 2004 (“*Milošević* Decision on the Assignment of Defence Counsel”), para. 9.

<sup>22</sup> Decision on Radivoje Miletić’s Interlocutory Appeal, para. 4; *Milošević* Decision on Defense Counsel, para. 9.

<sup>23</sup> *Milošević* Decision on Joinder, para. 4.

<sup>24</sup> Appeals Chamber’s Decision of 8 December 2006, para. 16; see also *Prlić* Decision on Cross-Examination, p. 3 citing *Milošević* Decision on Joinder, para. 4. See also *ibid.*, paras. 5-6; see also *Milošević* Decision on the Assignment of Defence Counsel, para. 10; Decision on Radivoje Miletić’s Interlocutory Appeal, para. 6 citing *Prosecutor v. Mićo Stanišić*, Case No. IT-04-79-AR65.1, Decision on Prosecution’s Interlocutory Appeal of Mićo Stanišić’s Provisional Release, 17 October 2005 (“*Stanišić* Provisional Release Decision”), para. 6.

<sup>25</sup> Decision on Radivoje Miletić’s Interlocutory Appeal, para. 6 & n. 17 citing *Stanišić* Provisional Release Decision, para. 6 & n. 10. The Appeals Chamber will also consider whether the Trial Chamber “has given weight to extraneous or irrelevant considerations or that it has failed to give weight or sufficient weight to relevant considerations . . . .” *Milošević* Decision on Joinder, para. 5.

### III. SUBMISSIONS OF THE PARTIES AND DISCUSSION

15. In his Interlocutory Appeal, Mr. Šešelj requests that the Impugned Decision be quashed and that the Appeals Chamber instruct the Prosecution and the Registry to translate into Serbian and disclose in hard copy all material disclosed under Rules 66 and 68 of the Rules.<sup>26</sup> In making this request, Mr. Šešelj claims that the Impugned Decision is no longer applicable, since the issue of the form of disclosure was settled by the Registrar's Decision of 8 December 2006. He acknowledges, however, that the Registrar's Decision of 24 January 2007 has complicated the situation and asks the Appeals Chamber to provide a final resolution in this matter.<sup>27</sup>

16. Mr. Šešelj alleges that the Impugned Decision violates his right to be informed in time and in a language he understands of the nature of the charges against him since he neither understands nor uses computers,<sup>28</sup> and that for disclosure obligations to be met,<sup>29</sup> "appropriate translations into the Serbian language, submitted in hardcopy format, are necessary" to enable him to prepare his defence and rely on the material provided by the Prosecution as evidence or as a means to refute evidence submitted by the Prosecution.<sup>30</sup> He adds that the Impugned Decision violates the Tribunal's jurisprudence<sup>31</sup> and that there is no reason why the guarantees provided by the Registrar's Decision of 8 December 2006 would apply to material originating from the Chambers but not to Prosecution material, since it is against the charges brought by the Prosecution that he needs to defend himself.<sup>32</sup>

17. In its Response, the Prosecution argues that Mr. Šešelj fails to demonstrate that the Trial Chamber committed a discernible error or abused its discretionary power and that the Impugned Decision remains therefore valid.<sup>33</sup> The Prosecution adds that the alleged confusion between the Impugned Decision and the Registrar's Decision of 8 December 2006 was clarified in the Registrar's Decision of 24 January 2007 and in the Trial Chamber's Decision of 31 January 2007.<sup>34</sup>

18. As a preliminary matter, the Appeals Chamber notes that the Interlocutory Appeal was filed outside of the seven-day deadline found in Rule 73(C) of the Rules for filing an interlocutory appeal subsequent to a Trial Chamber's grant of certification. Nevertheless, the Appeals Chamber recalls that pursuant to Rule 127(A)(ii) and (B) of the Rules, it may, on good cause being shown by

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<sup>26</sup> Interlocutory Appeal, p. 6.

<sup>27</sup> *Ibid.*, pp. 5-6.

<sup>28</sup> *Ibid.*, pp. 3-4.

<sup>29</sup> *Ibid.*, p. 3.

<sup>30</sup> *Ibid.*, pp. 3, 5-6.

<sup>31</sup> *Ibid.*, p. 4.

<sup>32</sup> *Ibid.*, p. 5.

<sup>33</sup> Prosecution's Response, para. 3.

motion, “recognize as validly done after the expiration of a time so prescribed on such terms, if any, as is thought just and whether or not that time has already expired.” Here, Mr. Šešelj did demonstrate good cause for the late filing of the Interlocutory Appeal, for he had valid reasons to believe that there was no need to pursue this Interlocutory Appeal in light of the written guarantees received from the Registrar in the Decision of 8 December 2006.<sup>35</sup> The Appeals Chamber also notes that on 1 February 2007, just after the Trial Chamber clarified in its Decision of 31 January 2007 that the Impugned Decision was still standing, Mr. Šešelj filed this Interlocutory Appeal.

19. Turning to the arguments of the Parties with respect to the Impugned Decision, the Appeals Chamber is not satisfied that Mr. Šešelj has demonstrated a discernible error on the part of the Trial Chamber in reaching the Impugned Decision. The Trial Chamber considered the “particular circumstances” of Mr. Šešelj’s representation including the fact that he is “not officially assisted by persons fluent in one of the official languages of the Tribunal”,<sup>36</sup> and whether disclosure of Rule 66 (A) and (B) and Rule 68 (i) and (ii) materials in English and in electronic format would affect Mr. Šešelj’s rights under Article 21 of the Statute. It held that electronic disclosure of Rule 66 (A) and (B) and Rule 68(i) materials did not breach the fair hearing principle stipulated under Article 21 of the Statute so long as reasonable and necessary assistance in the circumstances is given to an accused and noted that Mr. Šešelj would be “entitled to receive from the Registry the basic equipment and training necessary to make effective use of material disclosed in electronic format”.<sup>37</sup> It also ruled that in addition to Rule 66(A) material, which expressly provides for disclosure in a language the accused understands, Rule 68(i) material should also be subject to the same language requirement, because of the crucial impact of such material on the accused’s guilt or innocence.<sup>38</sup> Mr. Šešelj does not provide any references to the jurisprudence that the Trial Chamber allegedly disregarded in reaching the Impugned Decision. Neither does Mr. Šešelj demonstrate in what way the Impugned Decision violated his rights under Article 21 of the Statute.

20. That being said, the Appeals Chamber notes that although the present Decision does not find that the Trial Chamber incorrectly exercised its discretion in the Impugned Decision,<sup>39</sup> this does not prevent Mr. Šešelj from applying for a modification of the Impugned Decision to the

<sup>34</sup> Prosecution’s Resposne, para. 8, *citing* Trial Chamber’s Decision of 31 January 2007, paras 4-5.

<sup>35</sup> *See Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Submission Number 240, 9 January 2007, translation received on 11 January 2007; *see also Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on the Status of Decisions Issued and Pending Motions, 18 December 2006, para. 1, where the Trial Chamber noted that “the time-limit set out in Rule 73(C) of the Rules [with respect to appealing the Impugned Decision] expired in a time-period during which Mr. Šešelj’s physical condition might have been affected by his decision to refuse food and medication” and added that “any variation of this time-limit lies within the discretion of the Appeals Chamber”.

<sup>36</sup> Impugned Decision, para. 7.

<sup>37</sup> *Ibid.*, paras 12-13.

<sup>38</sup> *Ibid.*, para. 15.

<sup>39</sup> *See supra* para. 19.

newly assigned Trial Chamber,<sup>40</sup> which might consider, in its discretion, a different trial management approach than that followed in the Impugned Decision.

#### IV. DISPOSITION

21. On the basis of the foregoing, the Appeals Chamber **DISMISSES** the Interlocutory Appeal and, in accordance with Rules 78 and 107 of the Rules, **INSTRUCTS** the Registry of the Tribunal to lift the confidential status of the Interlocutory Appeal and of the Prosecution's Response and **ORDERS** that forthwith, these documents shall be considered as public filings.

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

Done this 17<sup>th</sup> day of April 2007,  
At The Hague,  
The Netherlands.



Fausto Pocar,  
Presiding Judge

[Seal of the Tribunal]

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<sup>40</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Order Reassigning a Case to a Trial Chamber, 20 February 2007.