



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-T
Date: 15 August 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr Hans Holthuis

Order of: 15 August 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

ORDER REGARDING THE RESUMPTION OF PROCEEDINGS

The Office of the Prosecutor:

Ms Christine Dahl
Mr Daryl Mundis

The Accused:

Mr Vojislav Šešelj

TRIAL CHAMBER III ("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 ("Tribunal"), in anticipation of the resumption of proceedings on 26 August 2008 in the present case;

NOTING the Prosecution motion seeking the termination of the Accused's self-representation¹ ("Motion for Assignment of Counsel"), in which the Prosecution requests in particular the immediate adjournment of the proceedings until the Chamber has ruled on this motion;²

NOTING the Prosecution's notice of 1 August 2008 regarding the appearance of witnesses beginning on 26 August 2008³ ("Notice"), in which the Prosecution recalls that it requested an adjournment of the proceedings in its Motion for Assignment of Counsel;⁴

CONSIDERING that the Prosecution maintains, in its Motion for Assignment of Counsel, that the Accused's self-representation obstructs the conduct of the trial, in particular through the intimidation and harassment of witnesses, and that allowing the trial to continue under these circumstances would undermine the integrity of the trial and allow the obstruction to perpetuate;⁵

CONSIDERING that the Prosecution nonetheless requests that the Motion for Assignment of Counsel be decided as quickly as possible because, even if the trial is adjourned pending the Chamber's determination, "the efforts of the [Accused's] associates are ongoing";⁶

CONSIDERING that the Prosecution indicates in the Notice that, in view of the evidence submitted in support of the Motion for Assignment of Counsel, it would

¹ Prosecution's Motion to Terminate the Accused's Self-Representation, with annexes, *ex parte* confidential, 29 July 2008 ("Motion for Assignment of Counsel"); *inter partes* confidential version filed on 30 July 2008 and annexes filed on 1 August 2008; public version filed on 8 August 2008.

² Motion for Assignment of Counsel, paras. 135, 137 (a).

³ Prosecution's Notice Regarding Witness Appearance Beginning 26 August 2008 ("Notice"), confidential, 1 August 2008.

⁴ Notice, p. 1, referring to the Motion for Assignment of Counsel.

⁵ Motion for Assignment of Counsel, paras. 135, 137 (a).

⁶ *Ibid.*

consider it “imprudent and unsafe” to publish at present a schedule of future witnesses;⁷

CONSIDERING that the Motion for Assignment of Counsel does not explicitly offer grounds as to why the adjournment of the proceedings would be necessary for the orderly conduct of the proceedings, in respect of the obstructions alleged both inside and outside the courtroom;

CONSIDERING on the one hand that, with regard to the obstructions allegedly committed outside of the courtroom, the Motion for Assignment of Counsel is not directed at all of the witnesses that the Prosecution intends to call in support of its case and that, as a result, it is possible for the Prosecution to provide a schedule of the witnesses and related documents, in accordance with its obligations, as put forward in the Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial (“Guidelines”);⁸

CONSIDERING that, on the other hand, the Prosecution alleges that inside the courtroom, the Accused (i) disrespects the Rules of Procedure and Evidence of the Tribunal (“Rules”) and misuses confidential information;⁹ (ii) refuses to follow the Chamber’s orders;¹⁰ (iii) intimidates and slanders witnesses;¹¹ (iv) insults and makes baseless attacks on the integrity of the Tribunal and its organs;¹² (v) injects false and fanciful allegations into the trial;¹³ (vi) uses a variety of obstructionist tactics to thwart the fair and expeditious conduct of the trial and uses the trial as a political forum,¹⁴ and (vii) is not able to represent himself;¹⁵

⁷ Notice, p. 1.

⁸ Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial, 15 November 2007 (“Guidelines”), para. 16, which reads: “During the trial, at the end of each week, each party will be invited to provide to the Chamber and to the other party a list of all the witnesses it intends to call over the next two months. In addition, the parties must inform the Chamber and the opposing party five days in advance of any change in the schedule of witness testimony. Moreover, the parties must provide to the Chamber and to the other party a definitive list of the exhibits and a complete binder containing the exhibits which it intends to use during its examination-in-chief of each witness at least two days before the start of the witness’ testimony”.

⁹ Motion for Assignment of Counsel, paras. 31-33.

¹⁰ *Id.*, para. 34.

¹¹ *Id.*, paras. 35-39.

¹² *Id.*, para. 40.

¹³ *Id.*, para. 41.

¹⁴ *Id.*, paras. 42-43.

¹⁵ *Id.*, para. 44.

CONSIDERING that the Chamber, while not ruling on the merits of the Motion for Assignment of Counsel, or examining allegations (i) to (v) above of obstruction by the Accused and the possible remedies, considers that the adjournment of the proceedings would in no way remedy the Accused's alleged conduct, especially since the Prosecution itself submits that the efforts of the associates of the Accused would continue despite an adjournment of the trial;¹⁶

CONSIDERING moreover that the continuation of the trial until the Chamber's decision on the merits of the Motion for Assignment of Counsel, in respect of the witnesses not concerned by the allegations of intimidation, does not adversely affect the smooth running of the proceedings and the conduct of a fair and expeditious trial for which the Chamber is responsible under Articles 20 (1) and 21 (4) (c) of the Statute of the Tribunal;¹⁷

CONSIDERING further that an adjournment of the proceedings at this stage would in no way resolve the Accused's alleged interference with the expeditiousness of the trial,¹⁸ particularly in light of the fact that the Accused has been in detention since 24 February 2003;

CONSIDERING that as regards the last two obstructions referred to in items (vi) and (vii) above, which are fundamental issues of the Motion for Assignment of Counsel on which the Chamber must deliberate, it is not for the Chamber to rule on them in a decision on the adjournment of the proceedings, but rather in the decision that will be rendered on the merits of the Motion for Assignment of Counsel;

CONSIDERING that the Prosecution has failed to provide a valid reason¹⁹ requiring, at this stage, the adjournment of the proceedings, that it is not for the Prosecution to

¹⁶ Motion for Assignment of Counsel, para. 135; the Chamber further recalls the measures taken to protect the integrity of the proceedings since the beginning of the trial, *see* in particular the Order Protecting the Integrity of the Proceedings, 18 June 2008, *see* also Decision on the Accused's Motions Concerning the Quality of Interpretation (Submissions 352, 354 and 366), 15 July 2008, para. 13.

¹⁷ Article 20 (1) provides: "The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses".

Article 21 (4) (c) provides: "In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: (...) to be tried without undue delay".

¹⁸ Motion for Assignment of Counsel, paras. 42-43.

¹⁹ *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Decision Adjourning Trial, 15 January 2001, p. 2.

prejudge the merits the Chamber will attach to its Motion for Assignment of Counsel and that it must, pending the Chamber's decision, continue to present its case on the date scheduled for the resumption of proceedings;

FOR THESE REASONS

IN ACCORDANCE WITH Articles 20 (1) and 21 (4) (c) of the Statute of the Tribunal and Rule 54 of the Rules,

DENIES the Prosecution motion to adjourn the proceedings,

ORDERS the Prosecution to provide the Chamber and the Accused, no later than 22 August 2008, a schedule of witnesses to appear as of 26 August 2008 and for the next two months.

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

_____/signed/_____

Jean-Claude Antonetti
Presiding Judge

Done this fifteenth day of August 2008
At The Hague
The Netherlands

[Seal of the Tribunal]