



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: 23 October 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President

Registrar: Mr. Hans Holthuis

Decision: 23 October 2008

PROSECUTOR

v.

Vojislav ŠEŠELJ

PUBLIC REDACTED

**DECISION ON VOJISLAV ŠEŠELJ'S APPEAL AGAINST THE
11 AUGUST 2008 DECISION OF THE UNDU'S ACTING
COMMANDING OFFICER**

The Office of the Prosecutor:

Mr. Daryl Mundis
Ms. Christine Dahl

The Accused:

Mr. Vojislav Šešelj

1. On 5 September 2008, Mr. Vojislav Šešelj (“the Applicant”) filed before me an appeal against a Decision of the Acting Commanding Officer of the United Nation Detention Unit (“UNDU”), dated 11 August 2008.¹ On 23 September 2008, following my request, the Registry filed a response to the Appeal, pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”).²

I. BACKGROUND

2. On 17 July 2008, the Applicant’s cell within the UNDU was searched,³ and a Cell Search Report prepared by the UNDU officer in charge.⁴ In the course of the search, two €500 notes, 19 “Eurocity” telephone cards and two unlabelled CD-Rom were found and retained by the officer in charge.⁵ On 29 July 2008, a disciplinary court officer requested to meet the Applicant so that he could explain how the abovementioned items came into his possession.⁶ The Applicant refused to speak with the officer,⁷ allegedly because the topic of the conversation had not been made clear to him.⁸ On 11 August 2008, the Decision of the Acting Commanding Officer was issued. The Applicant was informed that, subject to further explanation from him within three days as to the source and purpose of the retained items, a disciplinary punishment would be imposed on him.⁹ The Applicant failed to give further explanation and the money, telephone cards and CD-Rom were confiscated, and a fine equivalent to 25 per cent of the amount of money found his possession was imposed, *i.e.* € 250.¹⁰

¹ Appeal of Professor Vojislav Šešelj Against the Decision/Letter by the Commander of the Detention Unit Dated 11 August 2008, Confidential, 5 September 2008 (“Appeal”).

² Registry Submission Pursuant to Rule 33(B) on Vojislav Šešelj’s Appeal Dated 11 August 2008, Confidential, 23 September 2008, with three Annexes (“Rule 33(B) Submission”). I note that the title of the Registry Submission erroneously reads that the Appeal is dated 11 August 2008. The original B/C/S version of the Appeal was received by the Registry on 21 August 2008 and the English translation was filed on 5 September 2008. Conversely, on 11 August 2008 the letter of the Acting Commanding Officer of the Detention Unit was issued (see, Annex II to the Rule 33(B) Submission, (“Decision of the Acting Commanding Officer”).

³ Appeal, pp. 1-2; Rule 33(B) Submission, paras 7-8.

⁴ Annex I to the Rule 33(B) Submission, including a “Cell Search Report” dated 17 July 2008, and a “Report on Retained Item Resolution with Detainee”, dated 29 July 2008.

⁵ Appeal, pp. 1-2, 32; Cell Search Report; Report on Retained Item Resolution with Detainee; Rule 33(B) Submission, para. 9; Decision of the Acting Commanding Officer. I note that, while the Cell Search Report, the Decision of the Acting Commanding Officer and the Rule 33(B) Submission state that only *one* unlabelled CD-Rom was found during the search and retained, the Report on Retained Item Resolution with Detainee and the Appeal mention that *two* unlabelled CD-Rom were found and retained. Considering the inconsistency of the evidence before me, I will rely for the purposes of this Decision on the Applicant’s submission that two unlabelled CD-Rom were found and retained in the course of the search.

⁶ Report on Retained Item Resolution with Detainee; Decision of the Acting Commanding Officer, Appeal, p. 4, Rule 33(B) Submission, para. 10.

⁷ Report on Retained Item Resolution with Detainee; Decision of the Acting Commanding Officer, Appeal, p. 4, Rule 33(B) Submission, para. 10.

⁸ Appeal, p. 4.

⁹ Decision of the Acting Commanding Officer.

¹⁰ Decision of the Acting Commanding Officer, Appeal, pp. 2-3, 32; Rule 33(B) Submission, para. 11.

II. PRELIMINARY QUESTIONS

1. Use of offensive language by the Applicant

3. In its Rule 33(B) Submission, the Registry initially observes that it “strongly objects to the offensive language used and the unsubstantiated allegations made against staff members of the Tribunal in the [...] Appeal”.¹¹ It submits that the Applicant is abusing his right to represent himself by using offensive language and that submissions compromising the dignity of the proceedings should be rejected.¹² The Registry observes that, if the Appeal had been filed by a defence counsel, the President could have found its content abusive and could have sanctioned the counsel, pursuant to Rules 46 and 73(D) of the Rules.¹³ It further recalls that the Bureau has previously held that, although the specific sanction provided in Rule 46 of the Rules cannot be applied to self-represented accused, in such cases the Registry could be directed to deny filing of frivolous or abusive motions and the accused could be then required to file a new application.¹⁴

4. I note that, pursuant to Articles 3 and 4 of the “Practice Direction on the Procedure for Review of Written Submissions Which Contain Obscene or otherwise Offensive Language” (“Practice Direction”),¹⁵ in determining whether to accept the submission for filing, the Court Officer of the Registry shall take note of any language in the submission that may be considered obscene or otherwise offensive. If the submission is found to contain such language, the Court Officer shall seek direction from the Chamber on whether the submission should be accepted for filing. Article 6 of the Practice Direction further prescribes that, based on the determination made by the Chamber and communicated to the Court Officer in writing, the Court Officer shall either undertake to file the submission, or return the submission to the party, together with a letter explaining that submissions containing offensive language are not accepted for filing. I consider that, while the Practice Direction expressly refers to submissions filed before a Chamber, the same procedure applies, *mutatis mutandis*, to submissions filed before other judicial organs of the International Tribunal, such as a single Judge, the President, or the Bureau.

5. As is clear from the abovementioned provisions, the task assigned to the Registry is to screen written submissions *before* they are accepted for filing and, in case a submission is found to contain obscene or otherwise offensive language, seek direction from the judicial organ to which

¹¹ Rule 33(B) Submission, para. 3, referring in particular to Appeal, pp. 3, 4 and 6.

¹² Rule 33(B) Submission, paras 4-5.

¹³ Rule 33(B) Submission, para. 4.

¹⁴ Rule 33(B) Submission, para. 5, referring to *Prosecutor v. Šešelj*, Case No. IT-03-67-PT, Decision on Motion for Disqualification, 11 June 2003.

¹⁵ IT/240, 14 November 2005.

the submission is addressed. The decision as to whether a submission is to be accepted for filing rests exclusively with the judicial organ seized of the case, while it is for the Registry to execute such decision. No provision of the Practice Direction requests or allows the Registry to *subsequently* comment on a judicial organ's decision to accept or reject a filing, nor does any provision of the Statute or of the Rules do so. This is consistent with the functions of the Registry as described in Articles 11 and 17 of the Statute and Rule 33(A) of the Rules, which provides that “[u]nder the authority of the President, the Registry shall be responsible for the administration and servicing of the Tribunal and shall serve as its channel of communication”. As specified in Rule 33(B) of the Rules, the Registry's faculty to make oral and written submissions to the President or Chambers is limited to issues which affect or may affect the discharge of such functions.

6. In light of the above, I note that the remarks contained in the Rule 33(B) Submission are inappropriate and request the Registry to refrain from advancing similar observations in the future.

7. Nevertheless, I consider that, with the present Decision, the Applicant is put on notice that the Practice Direction applies not only to submissions addressed to a Chamber, but also to submissions addressed to any other organ of the International Tribunal. Consequently, the Applicant is warned that should he in future file a submission that contains obscene or otherwise offensive language I may direct the Registry not to file it.

2. Admissibility of the Appeal

8. I finally note that, in its Rule 33(B) Submission, the Registry recalls that the “Regulations for the Establishment of a Disciplinary Procedure for Detainees” (“Regulations on Disciplinary Procedure”) require that, in order to appeal to the President against the determination of a disciplinary offence and against the punishment imposed, a detainee must advise the Commanding Officer of his wish to appeal within twenty-four hours of the incident or the punishment.¹⁶ In light of that, the Registry submits that the Applicant has failed to follow the proper procedure by not informing in due time the Acting Commanding Officer of his intention to appeal the imposition of the sanction.¹⁷ However, the Rule 33(B) Submission also reads that “[i]n view of the fact that the Appeal has been filed and the President is now seized of the matter, the Registrar respectfully makes the following submissions”.¹⁸

¹⁶ IT/97, April 1995, para. 9.

¹⁷ Rule 33(B) Submission, para. 15.

¹⁸ Rule 33(B) Submission, para. 16.

9. I note that Article 41 of the Rules Governing the Detention of Persons Awaiting Trial or otherwise Detained on the Authority of the Tribunal (“Rules of Detention”)¹⁹, states that the UNDU Commanding Officer, in consultation with the Registrar, shall issue regulations on disciplinary proceedings providing, *inter alia*, a right to appeal to the President. I further note that the preamble to the Regulations on Disciplinary Procedure, issued by the Registrar in 1995,²⁰ provides that “[t]hese Regulations are subject to the provisions of the Rules of Detention of the Tribunal and, where applicable, its Rules of Procedure and Evidence”. Considering the hierarchy between the abovementioned sources, the outcome of the present Decision, and the circumstances of the case at issue –including the seriousness of the disciplinary offence and nature of the disciplinary punishment imposed, I am not satisfied that the Appeal is inadmissible because of the Appellant’s omission to notify the Acting Commanding Officer, within 24 hours, his intention to submit an appeal before me. I further direct both the Acting Commanding Officer of the Detention Unit and the Registrar to reconsider whether the requirement that a detainee must notify its intention to appeal within extremely strict time limits, as established in paragraph 9 of the Regulations on Disciplinary Procedure, constitutes an excessive restriction of a detainee’s right to appeal before me against the determination of a disciplinary offence or the punishment imposed.

3. Irrelevance of most of the Applicant’s submissions

10. I consider that most of the Applicant’s submissions are absolutely irrelevant with respect to the object of the Appeal and to the relief sought therein.²¹ Therefore, I will not address such submissions when discussing the matter at issue.

III. DISCUSSION

11. The Applicant claims that the search of his cell constituted an abuse of Rule 38 of the Rules of Detention.²² He submits that, pursuant to Rule 38 of the Rules of Detention, the UNDU Commanding Officer may authorise the search of a detainee’s cell only if he suspects that the cell contains an item which constitutes a threat to the security or good order of the UNDU or the Host Prison, or the health and safety of any person therein.²³ The Applicant argues that the Acting Commanding Officer did not have any reasons to believe that his cell could contain items of this nature and that, in any event, such reasons were not specified in the Acting Commanding Officer’s

¹⁹ IT/38/Rev. 9, 10 October 2005.

²⁰ *Supra*, fn. 16.

²¹ See, in particular, pp. 4-31.

²² Appeal, p. 3.

²³ Appeal, p. 3.

Decision.²⁴ The Applicant claims that the “increasingly frequent searches” of his cell are aimed at disrupting the preparation of his defence, consistent with the alleged continuous violations of his rights as an Accused before the International Tribunal.²⁵

12. The Applicant further argues that any disciplinary action undertaken by the Acting Commanding Officer should be based on a decision of the Registrar, and that he was not notified of any decision by the Registrar initiating a disciplinary proceeding against him.²⁶ The Applicant acknowledges that, as reported in the Acting Commanding Officer’s Decision, an officer asked to speak with him. However, he submits that he refused to talk with the officer because the topic of the conversation had not been made explicit.²⁷

13. The Applicant therefore requests that I rescind the Acting Commanding Officer’s Decision and order the Acting Commanding Officer to return to him all of the seized items.²⁸

14. The Registry responds that the search of the Accused’s cell, the confiscation of all items, and the imposition of the fine, were in accordance with the applicable law.²⁹

15. First, the Registry submits that the Acting Commanding Officer of the UNDU ordered searches of all the cells and common areas in the UNDU [REDACTED].³⁰ I note that the standard justifying a decision by the Commanding Officer to order the search of a detainee’s cell is one of suspicion rather than knowledge.³¹ Thus, the Acting Commanding Officer was entitled to order the search of the Applicant’s cell if he had reason to believe that a forbidden item could be found therein. I am satisfied that the information [REDACTED] constituted a reasonable basis to justify the order of searching the detainees’ cells. I further observe that the circumstances surrounding the search of the Appellant’s cell, and in particular the fact that a search was ordered of all cells and common areas in the UNDU, are sufficient to reject the Appellant’s complaint that the search of his cell was carried out as a disruptive measure directed against him personally.

²⁴ Appeal, p. 3.

²⁵ Appeal, pp. 4-5.

²⁶ Appeal, p. 5.

²⁷ Appeal, p. 5.

²⁸ Appeal, p. 32.

²⁹ Rule 33(B) Submission, para. 41.

³⁰ Rule 33(B) Submission, paras. 21, 7.

³¹ Rule 38 of the Rules of Detention reads that “(t)he Commanding Officer of the Detention Unit may decide upon the search of a detainee’s cell if he *suspects* that the cell contains an item which constitutes a threat to the security or good order of the Detention Unit or the host prison, or the health and safety of any person therein. Any such item found in the cell of the detainee shall be confiscated pursuant to Rule 74” (emphasis added).

16. Second, the Registry submits that the search was performed with respect to Rules of Detention and the UNDU Post Orders and Procedures.³² I note that both the Search Cell Report and the Acting Commanding Officer Decision state that the Accused was informed of his right to be present during the search and indeed chose to be present. The Acting Commanding Officer Decision further alleges that the Applicant refused to meet with the disciplinary officer aiming to discover the provenance of the seized items. This fact is confirmed in the Appeal itself, although the Appellant specifies that his refusal was due to the lack of clarity about the meeting's subject.³³ In light of the above, I consider that the Applicant did not show any procedural irregularities in the performance of the search and in the subsequent disciplinary procedure, as prescribed by Rules 74 and 14 of the Rules of Detention, paragraphs 2 and 6 to 8 of the Regulations on Disciplinary Procedure, and the UNDU's internal Post Orders and Procedures. Further, and contrary to the Applicant's submissions, I find that neither the Rules of Detention nor any provision of the Regulations on Disciplinary Procedure require that an order authorizing a search or the adoption of disciplinary sanctions be preceded by a decision of the Registrar formally initiating a disciplinary proceeding against a detainee. Therefore, I find no merit in the Applicant's complaint that he was not notified of an alleged decision by the Registrar starting a disciplinary proceeding.

17. Third, the Registry submits that all of the abovementioned items were confiscated lawfully. I appreciate that, in line with common prison practice, the UNDU system is based on cashless payments, in order to avoid the possibility of bribery and other illegal monetary transactions.³⁴ Any money that a detainee receives must be handed over to the UNDU authorities and deposited in the detainee's bank account.³⁵ I am therefore satisfied that there were good reasons to believe that the two €500 notes found in possession of the Applicant had been smuggled into the UNDU and that the money was confiscated lawfully pursuant to Rule 74 of the Rules of Detention, paragraph 2 of the Regulations on Disciplinary Procedure, and the UNDU Post Orders and Procedures.

18. I also note that, pursuant to Rules 14(A) and 75 of the Rules of Detention, any item introduced from outside the UNDU shall be subject to security controls by both the UNDU and the host prison and be registered by the UNDU authorities. The Registry states that *Eurocity* telephone cards cannot be purchased within the UNDU and that no UNDU record shows that the telephone cards were brought into the UNDU in accordance with the rules. Therefore, I find that the officer in charge reasonably considered that the telephone cards had been smuggled into the UNDU and

³² Rule 33(B) Submission, para. 30.

³³ Appeal, p. 5.

³⁴ Rule 33(B) Submission, para. 24.

³⁵ Rule 33(B) Submission, para. 24.

lawfully confiscated them, pursuant to Rule 74 of the Rules of Detention, paragraph 2 of the Regulations on Disciplinary Procedure, and the UNDU Post Orders and Procedures.

19. As to the confiscation of the two unlabelled CD-Rom, the Registry submits that, according to the UNDU Order concerning CDs and DVDs issued to all detainees on 27 March 2008,³⁶ all so called “non-paper media” must be registered and labelled by the UNDU management before being brought into the UNDU.³⁷ This is done to prevent contraband from being brought into the detention facilities and also applies to disclosure material, which in any event is not reviewed by the UNDU staff.³⁸ The Registry submits that an exception to this provision has been granted to the Applicant to allow that DVD copies of the proceedings’ record be given to him in court. In such cases, the labelling of the DVD is carried out by the Tribunal Court Officer.³⁹ In light of the above, I find that the two CD-Rom were confiscated lawfully, in accordance with Rule 74 of the Rules of Detention, paragraph 2 of the Regulations on Disciplinary Procedure, and the UNDU Post Orders and Procedures.

20. Finally, the Registry submits that the imposition of the €250 fine was in line with the Regulations on Disciplinary Procedure.⁴⁰ I note that paragraph 2 of the Regulations on Disciplinary Procedure provides that possession of illegal objects or substances constitutes a disciplinary offence, while paragraph 7 includes confiscation of an offending items and monetary fine among the list of punishments the Commanding Officer is entitled to impose. In light of the nature of the disciplinary offence ascertained and of the amount of contraband in the Applicant’s possession, I am satisfied that the confiscation of the items unlawfully possessed by the Applicant and the imposition of a €250 fine was neither unreasonable nor disproportionate.

³⁶ Annex III to the Rule 33(B) Submission.

³⁷ Rule 33(B) Submission, para. 30.

³⁸ Rule 33(B) Submission, para. 30.

³⁹ Rule 33(B) Submission, fn. 8.

⁴⁰ Rule 33(B) Submission, paras 34-40.

IV. DISPOSITION

21. On the basis of the foregoing, the Appeal is **DISMISSED**.

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

Done this 23rd day of October 2008,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President