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-T

Date: 27 November 2008

Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: **Mr Hans Holthuis**

Decision of: **27 November 2008**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

REDACTED VERSION OF THE "REDACTED VERSION OF THE 'DECISION ON PROSECUTION MOTION TO TERMINATE THE ACCUSED'S SELF-REPRESENTATION' FILED CONFIDENTIALLY AND *EX PARTE* ON 25 NOVEMBER 2008"

The Office of the Prosecutor

Mr Daryl Mundis
Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

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I. PROCEDURAL BACKGROUND

1. 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") is seized of the Prosecution's motion seeking an end to the Accused's conduct of his own defence ("Motion").[1] By oral decision of 17 July 2008, the Chamber granted the Prosecution's request to exceed the 3,000-word limit applicable to motions.[2]

2. On 15 August 2008, the Chamber stayed its ruling on the part of the Motion related to the need to adjourn the hearings pending the Chamber's decision on the merits of the Motion[3] ("Order Regarding the Resumption of Proceedings"). The Chamber considered that

> the Prosecution has failed to provide a valid reason requiring, at this stage, the adjournment of the proceedings, that it is not for the Prosecution to 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.[4]

3. On 22 August 2008, the Prosecution requested certification to appeal the Order Regarding the Resumption of Proceedings.[5] On 26 August 2008, the Accused made an oral objection to this request.[6] The same day, the Chamber granted the Prosecution request, considering "on the one hand, that the question as to whether the proceedings should be stayed or should continue, given the circumstances, may jeopardise the fairness of the trial or its outcome"[7] and "on the other hand, that it is

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[1] Prosecution's Motion to Terminate the Accused's Self-Representation, with annexes, confidential and *ex parte*, 29 July 2008 ("Motion to Assign Counsel"); confidential and *inter partes* version filed on 30 July 2008 and annexes filed on 1 August 2008; public version filed on 8 August 2008, [redacted].
[2] *See* hearing of 17 July 2008, Transcript in French ("T(F)") 9623-9625, where the Prosecution requested an enlargement of the word-limit up to 35,000 words and where the Chamber granted the same enlargement to the Accused. At the time of filing, the final Motion contained only 19,327 words, with a first annex of 12,766 words and annexed documents consisting of approximately 1,500 pages.
[3] Motion to Assign Counsel, paras.135, 137(a).
[4] Order Regarding the Resumption of Proceedings, p. 3 (footnote omitted), referring in this passage to *The Prosecutor v. Radislav Krstić,* Case No. IT-98-33-T, Decision Adjourning Trial, 15 January 2001, p. 2.
[5] Prosecution's Request for Certification to Appeal 'Order Regarding the Resumption of Proceedings' Dated 15 August 2008 and Request for Stay, confidential, 22 August 2008.
[6] Hearing of 26 August 2008, T(F). 9806-9815.
[7] *Id.*, T(F). 9819.

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necessary for the Appeals Chamber to immediately solve this question".[8] The Chamber further considered that since the central issue of the appeal was the very adjournment of the proceedings, it was thus necessary to adjourn the hearings pending receipt of the Appeals Chamber's decision on the matter.[9]

4. Moreover, at the hearing of 26 August 2008, the Accused also requested disclosure of the entire Motion, including its annexes filed on 1 August 2008.[10] In its Motion, the Prosecution formally objected to the disclosure of "sensitive" information to the Accused and asked that it be informed with the Victims and Witnesses Section of the Tribunal before any potential disclosure ordered by the Chamber.[11] While the Chamber considered that it could not order the disclosure of internal Prosecution documents or documents and information that would jeopardize the safety of the witnesses, in particular in the event the allegations made in the Motion proved to be founded, it decided that certain additional documents could be disclosed to the Accused. The Accused would have one month to respond as from the date he received the said documents in a language he understands.[12]

5. On 16 September 2008, the Appeals Chamber of the Tribunal ("Appeals Chamber") upheld the Order Regarding the Resumption of Proceedings.[13] Following an order from the Chamber dated 17 September 2008, the hearings in the present case were to resume on 28 September 2008.[14]

6. On 11 November 2008, the Accused's response to the Motion was filed confidentially, after being translated into one of the two languages of the Tribunal.[15] By oral decision of the same day, the Chamber informed the Accused that only the first part of his response containing 31,256 words would be filed.[16]

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[8] *Ibid.*
[9] *Ibid.*
[10] Hearing of 26 August 2008, T(F). 9806.
[11] Motion to Impose Counsel, para. 5.
[12] Order on the Accused's Oral Motion to Obtain the Confidential and *Ex Parte* Version of the Motion to Impose Counsel, 27 August 2008.
[13] Decision on Prosecution's Appeal Against the Trial Chamber Order Regarding the Resumption of the Proceedings, 16 September 2008.
[14] Order Regarding Resumption of the Proceedings, 17 September 2008.
[15] Response by Professor Vojislav Šešelj to the Prosecution's Motion to Terminate the Accused's Self-representation", submitted on 25 September 2008 and filed confidentially on 11 November 2008.
[16] Hearing of 11 November 2008, T(F). 11552-11553.

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7. [redacted].[17] [redacted].[18]

II. ARGUMENTS OF THE PARTIES

A. Arguments presented by the Prosecution in the Motion

8. In the Motion, the Prosecution seeks, in substance, the immediate termination of the Accused's right to self-representation and, consequently, the removal of his privileged associates from the case, and the imposition of Defence Counsel for the Accused for the remainder of the trial.[19]

9. The Prosecution submits that Counsel must be imposed on the Accused in light of a general campaign of obstruction whose very existence it alleged to arise from his right to represent himself. Indeed, the Prosecution submits that since the beginning of the trial, the Accused has engaged in consistently disruptive and obstructionist behaviour which has substantially and persistently impeded the proper conduct of the trial, both inside and outside of the courtroom.[20]

10. Inside the courtroom, the Prosecution alleges that the Accused (i) disrespects the Rules and misuses confidential information,[21] (ii) refuses to follow the Chamber's orders,[22] (iii) intimidates and slanders the witnesses,[23] (iv) insults and makes baseless attacks on the integrity of the Tribunal and its organs,[24] (v) injects false and fanciful allegations into the trial,[25] (vi) uses an array of obstructionist tactics to undermine the expeditiousness and fairness of the trial and uses the trial as a platform for political activities,[26] and (vii) is not, as a result, in a position to represent himself.[27]

11. [redacted][28] [redacted].[29]

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[17] [redacted].
[18] [redacted].
[19] Motion, para. 1.
[20] *Id.*, para. 29.
[21] *Id.*, paras. 31-33.
[22] *Id.*, paras. 34.
[23] *Id.*, paras. 35-39.
[24] *Id.*, para. 40.
[25] *Id.*, para. 41.
[26] *Id.*, paras. 42-43.
[27] *Id.*, para. 44.
[28] [redacted].
[29] [redacted].

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12. The Prosecution therefore arrives at the conclusion that the integrity and expeditiousness of the proceedings cannot be safeguarded without Counsel being imposed on the Accused.[30]

B. Arguments Presented by the Accused in the Response to the Motion

13. The Accused strenuously objects to the Motion. According to the Accused, the Prosecution has caused the obstructionism by making unbelievable allegations, whereas the Accused was merely protecting the exercise of his rights.[31] Moreover, in the view of the Accused, every accused has the right to represent himself and, should he feel unable to do so, he can then retain Counsel of his choice.[32]

14. In particular, the Accused refutes the allegations against him as regards the deliberate misuse of confidential information,[33] the refusal to follow the Chamber's orders,[34] the intimidations of and abusive comments to witnesses,[35] the insults and other attacks on the integrity of the Tribunal and its organs,[36] the fanciful allegations and his obstructionist behaviour.[37]

15. The Accused submits that the allegations of obstruction outside of the courtroom are unfounded and illogical. [redacted].[38] [redacted].[39]

16. The Accused concludes his Response by giving a detailed presentation of the violations of his basic rights as an accused before his transfer to The Hague and in the course of the proceedings before the Tribunal.[40] In particular, the Accused refers to the political basis for his indictment,[41] the duration of the trial,[42] the legal uncertainty

[30] *Id.*, para. 128.
[31] Response, pp. 11-24.
[32] *Id.*, p. 56.
[33] *Id.*, pp. 30-32.
[34] *Id.*, pp. 32-35.
[35] *Id.*, pp. 35-36.
[36] *Id.*, pp. 36-37.
[37] *Id.*, pp. 37-38.
[38] [redacted].
[39] [redacted].
[40] *Id.*, pp. 57-86.
[41] *Id.*, pp. 57-62.
[42] *Id.*, pp. 62-65.

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caused by the frequent amendments to the Rules,[43] the political nature of the Tribunal[44] and, more generally, the questioning of his right to represent himself.[45]

III. DISCUSSION

A. Preliminary Observation

17. [redacted].

B. Relationship between the Motion [redacted]

18. As the Chamber has recalled above, the Motion sets out allegations related to the intimidation of witnesses and the intentional revelation of confidential information by the Accused and his associates.[46]

19. [redacted].[47] [redacted],[48] [redacted],[49] [redacted],[50] [redacted],[51] [redacted],[52] [redacted],[53] [redacted],[54] [redacted][55] and [redacted].[56] [redacted],[57] [redacted],[58] [redacted],[59] [redacted],[60] [redacted],[61] [redacted],[62] [redacted],[63] [redacted],[64] [redacted],[65] [redacted].[66] [redacted],[67] [redacted],[68] [redacted],[69] [redacted],[70]

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[43] *Id.*, p. 65.
[44] *Id.*, pp. 65-66.
[45] *Id.*, pp. 69-86.
[46] *See* paras. 8-12 *supra*.
[47] [redacted].
[48] [redacted].
[49] [redacted].
[50] [redacted].
[51] [redacted].
[52] [redacted].
[53] [redacted].
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[64] [redacted].
[65] [redacted].
[66] [redacted].
[67] [redacted].
[68] [redacted].
[69] [redacted].
[70] [redacted].

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[redacted],[71] [redacted],[72] [redacted],[73] [redacted],[74] [redacted],[75] [redacted],[76] [redacted],[77] [redacted],[78] [redacted],[79] [redacted],[80] [redacted],[81] [redacted][82] and [redacted].[83]

20. [redacted].[84] [redacted].[85]

21. [redacted].[86]

C. Examination of the Motion

22. The Motion is based on allegations of unlawful and obstructionist behaviour by the Accused in the courtroom, as well as on allegations of behaviour outside of the courtroom, [redacted].

23. As regards the first category of allegations, the Chamber considers that with respect to the Accused's behaviour in the courtroom, the Chamber itself has exercised control which on numerous occasions has led it, on the one hand, to redact from the public version of the trial transcript the erroneous assertions the Accused has made against witnesses in cross-examination or against the Prosecutor[87] and, on the other hand, to order the Accused to stop making his often overly aggressive statements.[88] The Chamber considers therefore that in the Motion the Prosecution has failed to provide the Chamber with sufficient evidence of the Accused's behaviour inside the courtroom that would enable it to conclude, at this stage and on this basis alone, that

[71] [redacted].
[72] [redacted].
[73] [redacted].
[74] [redacted].
[75] [redacted].
[76] [redacted].
[77] [redacted].
[78] [redacted].
[79] [redacted].
[80] [redacted].
[81] [redacted].
[82] [redacted].
[83] [redacted].
[84] [redacted].
[85] [redacted].
[86] [redacted].
[87] [redacted].
[88] [redacted]; *see* also Order Protecting the Integrity of the Proceedings, 18 June 2008.

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the Accused is unable to continue to represent himself and, consequently, to deprive him of his right that has recognized by the Appeals Chamber.[89]

24. Furthermore, the Chamber notes that, on several occasions, it has had the opportunity to observe that the Accused is capable of successfully conducting a cross-examination.

25. [redacted].[90] [redacted].

26. The Motion, which is the subject of the present decision, is therefore intrinsically and to a large extent linked to the allegations [redacted], the handling of which no longer falls within the Chamber's jurisdiction. [redacted].

IV. DISPOSITION

27. For these reasons, in accordance with Rule 54 of the Rules, **STAYS ITS DECISION**

(i) on the Motion [redacted]; and

(ii) [redacted].

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-seventh day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

[89] *The 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: *see* also *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.3, Decision on Appeal Against the Trial Chamber's Decision on Assignment of Counsel, 20 October 2006.
[90] [redacted].

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