



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: 10 February 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 10 February 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON THE ACCUSED'S ORAL REQUEST TO REINSTATE
MESSRS. ZORAN KRASIĆ AND SLAVKO JERKOVIĆ
AS PRIVILEGED ASSOCIATES**

The Office of the Prosecutor

Mr Mathias Marcussen

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”), is seized of an oral request submitted by Vojislav Šešelj (“The Accused”) to reinstate Messrs. Zoran Krasić and Slavko Jerković as his privileged associates (“Request”).¹

1. PROCEDURAL BACKGROUND

2. On 21 December 2006, Messrs. Zoran Krasić and Slavko Jerković signed a confidentiality agreement with the Registry of the Tribunal,² and in this way, became privileged associates of the Accused. Therefore, they were able to have access to confidential information regarding the case as well as to the courtrooms and have privileged communications with the Accused and regular visits to the Detention Unit, with the Tribunal covering their travel expenses to The Hague.

3. By letter dated 28 November 2008, the Registry informed the Accused of the revocation of the status of privileged associates of Messrs. Zoran Krasić and Slavko Jerković on account of allegations of witness intimidation, allegations of having disclosed confidential information to a third party and their public statements aimed at discrediting the Tribunal (“Letter of 28 November 2008”).³

4. The Accused subsequently requested the reinstatement of Messrs. Zoran Krasić and Slavko Jerković⁴ which was refused by the Registry on 10 September 2009 (“Impugned Decision”)⁵ on the ground that the reasons for the revocation of their status as privileged associates, set out in the Letter of 28 November 2008, were still valid. Furthermore, according to the Registry, the absence of proof regarding the Accused’s indigency justified the non-reimbursement of the travel expenses of Messrs. Zoran Krasić and Slavko Jerković, given that in the past this reimbursement was only offered on a complementary basis as there was no obligation to do so.

¹ Hearing of 12 January 2010, T (F) p. 14829.

² English translation of BCS original of the agreement signed between the associates and the Registry entitled: “Undertaking by Mr Slavko Jerković” and “Undertaking by Mr Z. Krasić”, 21 December 2006.

³ Letter from the Registrar to Vojislav Šešelj, 28 November 2008 (“Letter of 28 November 2008”).

⁴ Translation of BCS original entitled: “Submission 423”, 1 September 2009.

⁵ Letter from the Registrar to Vojislav Šešelj, 10 September 2009 (“Impugned Decision”).

5. The Accused lodged an appeal against the Impugned Decision before the President of the Tribunal (“President”) on 15 September 2009.⁶

6. On 21 October 2009, the President dismissed the appeal of the Accused on the ground that the Registrar had not acted unreasonably in his Letter of 28 November 2008 and *a fortiori* in the Impugned Decision with regard to the suspension of communications between the Accused and Messrs. Zoran Krasić and Slavko Jerković and the reimbursement of the travel costs of the two associates.⁷

7. On 12 January 2010, the Accused turned therefore to the Chamber requesting that it grant his request for the reinstatement of Zoran Krasić and Slavko Jerković as his privileged associates.⁸

II. ARGUMENTS OF THE ACCUSED

8. The Accused argues that after having challenged the Impugned Decision before the Registrar and subsequently before the President of the Tribunal, it was henceforth a matter for the Trial Chamber to rule on any possible violation of his rights and on the question of whether in the interests of justice Messrs. Zoran Krasić and Slavko Jerković should be reinstated as his privileged associates.⁹

9. The Accused also notes that, in terms of their experience, these two associates are irreplaceable since they have been involved in his defence since the beginning of the case and are the only ones who have specialised knowledge of his file.¹⁰

III. APPLICABLE LAW

10. Article 20 of the Statute of the Tribunal sets out in its first paragraph:

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.

⁶ Translation of BCS original entitled: “Submission 425”, 15 September 2009.

⁷ Judge Mehmet Güney, acting President of the International Tribunal, “Decision on Vojislav Šešelj’s Request for Review of Registrar’s Decision of 10 September 2009”, 21 October 2009 (“Decision of 21 October 2009”).

⁸ Hearing of 12 January 2010, T (F) p. 14829.

⁹ *Ibid.*, T (F) p. 14829.

¹⁰ *Ibid.*, T (F) p. 14829.

11. Article 21 (4) (d) of the Statute of the Tribunal sets out the rights of the Accused as:

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 equity:

d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

12. Appeals Chamber jurisprudence confirms that although appeals lodged against the administrative decisions of the Registry lie with the President of the Tribunal, the Chamber retains its inherent power as guarantor of a fair trial.¹¹

IV. DISCUSSION

13. The Chamber notes that in his Decision of 21 October 2009, the President held that the Registrar, in his Decision of 10 September 2009, had not acted unreasonably by refusing to reinstate Messrs. Zoran Krasić and Slavko Jerković as privileged associates, and by deciding to maintain the suspension of their privileged communications, their access to the courtroom, their access to confidential documents and the reimbursement of their travel expenses.¹²

14. The Chamber notes that it does not have the authority to challenge the reasons set out by the Registrar which form the basis of his decisions to revoke the status of privileged associates of Messrs. Zoran Krasić and Slavko Jerković, and also notes that these reasons, confirmed by the Decision of 21 October 2009, still exist at the time of this decision.

15. However, the Chamber recalls that is the guarantor of a fair and expeditious trial and that, therefore, it has the authority to assess whether or not the revocation of

¹¹ “Decision on the Registry Submission Pursuant to Rule 33 (B) Following the President’s Decision of 17 December 2008”, 9 April 2009, paras 15, 20-21. The Appeals Chamber refers notably to the jurisprudence in *The Prosecutor v. Blagojević*, Case No. IT-02-60-AR.73.4, “*Ex parte* and Confidential Reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team”, 7 November 2003.

¹² Decision of 21 October 2009, paras 20-26.

the status of privileged associates of Messrs. Zoran Krsić and Slavko Jerković irreparably violates the rights of the Defence.

15 *bis*. On this point, the Chamber notes that the Accused has the possibility of requesting that other associates who were already assisting him at the beginning of the case be given the status of privileged associate. The Chamber also notes that the Accused has shown that he was perfectly capable of leading his own defence when Messrs. Zoran Krsić and Slavko Jerković no longer held the status of privileged associates. The Chamber, however, appreciates the importance the Accused attaches to the assistance of these two associates in particular. Furthermore, the Chamber is aware that given the resumption of hearings with the remaining witnesses, as decided in its Decision of 23 November 2009,¹³ the right of the Accused to prepare his defence and be properly assisted by associates who are well acquainted with his file becomes all the more imperative.

16. That being the case, the Chamber considers that the refusal to reinstate Messrs. Zoran Krsić and Slavko Jerković as privileged associates does not constitute a violation of the Accused's right to a fair trial. Nevertheless, the Chamber considers that the rights of the Defence would be better served if the Accused could be assisted by Messrs. Zoran Krsić and Slavko Jerković in the open sessions of the presentation of the Defence case, should that presentation take place. To this end, the Chamber invites the Registry to reimburse, on a complimentary and exceptional basis, the travel expenses Messrs. Zoran Krsić and Slavko Jerković incur in order to assist the Accused exclusively in the circumstances described in this paragraph.

¹³ "Consolidated Decision on Assignment of Counsel, Adjournment and Prosecution Motion for Additional Time with Separate Opinion of Presiding Judge Antonetti in Annex", confidential and *ex parte* version and confidential version filed on 23 November 2009. Public version filed on 24 November 2009.

V. DISPOSITION

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 and 21 of the Statute,

AUTHORISES Messrs. Zoran Krasić and Slavko Jerković to assist the Accused in the open sessions of the presentation of the Defence case, should this presentation take place.

INVITES the Registrar to take care of reimbursing their travel expenses incurred in order to assist the Accused at this stage.

DISMISSES the Request in all other respects.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this tenth day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]