



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: 2 November 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: 2 November 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**REDACTED VERSION OF DECISION ON FINANCING OF DEFENCE,
FILED ON 29 OCTOBER 2010**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

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”) [redacted].¹

II. PROCEDURAL BACKGROUND

2. Vojislav Šešelj (“Accused”) has been detained by the Tribunal since February 2003. He first requested financing for his defence on 31 October 2003 and subsequently repeated this request at regular intervals throughout his trial. He decided, furthermore, to conduct his own defence and the Appeals Chamber recognised his right to do so.²

3. On 6 July 2010, the Registrar issued a public decision denying the Accused’s request for financing his defence, on the ground that the latter had not furnished all the information necessary for the assessment of his financial situation.

4. During the hearing of 2 March 2010, the Accused indicated that he would need two years to prepare his defence, were the Tribunal not to finance it.³

5. [redacted].

6. [redacted].

7. [redacted].

8. [redacted].

9. During the administrative hearing of 21 September 2010, the Accused indicated that he had received a letter from the Registry asking his opinion on the complexity level of the current stage of the case. The Accused alleged that the Registrar had in the past already assessed the complexity of this case at the maximum

¹ [redacted].

² See Case IT-03-67-AR73.3, “Decision on Appeal Against the Trial Chamber’s Decision on Assignment of Counsel”, public, 20 October 2006.

³ Hearing of 2 March 2010, Transcript in French (“T(F)”), pp. 15575-15576.

level, namely level three and had, consequently, paid on this basis the three standby counsel that had been appointed to him successively by the previous Trial Chamber in charge of this case.⁴

10. [redacted].

11. [redacted].

12. [redacted].

13. [redacted].⁵

III. APPLICABLE LAW

14. Article 21 (4)(b) of the Statute of the Tribunal (“Statute”) confers upon every accused the right to have the time and facilities required for the preparation of his or her defence.

15. According to the Tribunal’s Appeals Chamber, this entails that an indigent accused wishing to exercise his right to personally provide for his defence during his trial before the Tribunal may be granted, rather than legal aid, funds that would enable him to compensate those legal associates designated by the Registry to assist him in preparing his defence. Such financing does not, however, compare to that provided in connection with legal aid for an accused represented by paid counsel.⁶

16. Only those accused responsible for their own defence, who were declared indigent or partially indigent, may obtain funds from the Tribunal for the purpose of compensating the persons assisting them in preparing their defence, calculated on the basis of the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, adopted by the Registry on 24 July 2009 (“Scheme”).

⁴ Hearing of 21 September 2010, T(F), p. 16407. The Chamber notes, furthermore, that the Accused also requested that all travel expenses linked to his defence be reimbursed.

⁵ [redacted].

⁶ See also *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, “Decision on Krajišnik Request and on Prosecution Motion”, public document, 11 September 2007, para. 42.

17. Moreover, *mutatis mutandis*, in keeping with Article 8 of the Directive on the Assignment of Defence Counsel (“Directive”),⁷ it is the responsibility of the Accused to produce proof that he does not have the means to provide for his own defence.

18. In like manner, in keeping with Article 9 of the Directive, the Registrar has the authority to collect any information and to request presentation of any document that may confirm a proper basis for the request, as well as to request information from any person who appears capable of providing the same.

19. Finally, applying Article 13 (A) of the Directive, the Trial Chamber has the authority to void any decision of the Registry declining to fund the defence of an accused and to direct payment of the expenses of that defence.

IV. DISCUSSION

20. [redacted].

21. [redacted], the Chamber observes that:

(1) Although the Accused supplied certain information to the Registry to prove his indigence, he refused, however, to cooperate fully with the Registry concerning this issue, leaving certain grey areas about his financial situation;

(2) However, the Registry has obtained some information [redacted];

(3) [redacted], the Registry confirms that it will be impossible to verify the information received from the Accused without an order from the Tribunal.⁸ The Chamber points out here that it is not aware of whether the Registry has ever sought such an order;

(4) All of the property and assets the Accused stated he possessed and which the Registry has been able to identify as belonging to the Accused, his close family members and the Accused’s defence fund, may apparently be valued in the aggregate at roughly [redacted] euro. The Chamber observes here that

⁷ Practice Directive No. 1/94, IT/73/Rev. 11, adopted on 30 January 1995; amended most recently on 29 June 2006.

having the Registry take into account the resources of the Accused's wife and two children is not something the Chamber considers reasonable on the basis of Article 10 of the Directive.⁹ It is thus not acceptable that the resources of close family members of the Accused be included for the funding of his defence in lieu of being used for their daily expenses and all of the costs related to their basic needs;

(5) The Registry is unable to determine whether all of the property listed as belonging to the Accused and his close family, [redacted], is available and therefore whether they constitute a source of money that can be immediately devoted to financing the Accused's defence.

22. The Chamber finds that, even though the Accused has not fully cooperated in providing proof of his indigence, pursuant to Article 8 of the Directive, it is nevertheless the responsibility of the Registry to obtain all of the confirmation it can in order to rapidly resolve the issue of how the Accused's defence will be funded.

23. The Chamber observes, moreover, that the Registry acknowledges being unable to inform it as to whether most of the property and assets of the Accused are presently capable of liquidation.

24. The Chamber likewise emphasizes that it has, at regular intervals since it was formed in October 2007, alerted the Registry concerning the need to render a decision rapidly concerning the issue of the Accused's indigence and has asked it on numerous occasions to provide explanations concerning how the issue is being managed, particularly in comparison with the other accused before the Tribunal who are self-representing.¹⁰ This has led the Chamber to convene many meetings with the Registry and to exchange numerous internal memoranda with a view to resolving the issue of funding the Accused's defence, as the Chamber is the guarantor of the rights of the Accused and thus, his right to have the time and the facilities necessary for preparation of his defence as contemplated by Article 21 (4)(b) of the Statute.

⁸ [redacted].

⁹ The Chamber points out that the Registry has not provided information to the Chamber concerning the make-up of the Accused's family, particularly as to whether there are underage children.

¹⁰ [redacted].

25. The Chamber, however, observes that, despite all of the information it has received from the Registry on this issue, it is unable to determine precisely the amount at which the personal estate of the Accused is valued or to know whether his property and assets are presently capable of liquidation in order to permit him to fund his defence.

26. The Chamber points out that the phase for presentation of Prosecution evidence has almost concluded and that the Accused will, if he should so wish, otherwise need to start preparing a motion in the context of the procedure under Rule 98 *bis* of the Rules, then, depending on the decision rendered by the Chamber concerning that motion, he could then find it necessary to present Defence evidence. Under such circumstances, given that the Accused has been in provisional detention for almost eight years, against the backdrop of the Completion Strategy and in the interests of justice, the Chamber, as it is responsible for the expeditiousness of the Trial, will not allow the matter of the funding the Accused's defence to have a negative impact upon the status of the proceedings or to slow the progress of the trial.¹¹

27. That is why the Chamber has seized itself *proprio motu* of this matter, with Judge Lattanzi including a separate opinion on this matter, and declares that, from this day forward, the Accused's defence shall be funded up to 50%, unless other documents are provided by the Accused or the Registry concerning this matter, without prejudice to the rights of the Accused to receive other financing should he establish his indigence.

V. DISPOSITION

FOR THE FOREGOING REASONS, pursuant to Article 21 (4)(b) of the Statute and Rule 54 of the Rules,

[redacted].

¹¹ See *The Prosecutor v. Jadranko Prlić et al.*, Case IT-04-74-PT, "Decision on Assignment of Defence Counsel (Confidential Annex)", public document, 15 February 2006, para. 11; see also the redacted public version of the decision relating to legal aid for the Accused, rendered on 26 November 2009 by

