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: 25 November 2010
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: **25 November 2010**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

REDACTED VERSION OF "SEPARATE OPINION OF JUDGE FLAVIA LATTANZI ON THE 'DECISION ON FINANCING OF DEFENCE' RENDERED ON 29 OCTOBER 2010" FILED ON 24 NOVEMBER 2010

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I agree with the decision of the Chamber to order the Registrar to fund the defence team of the Accused consisting of three privileged associates, a case manager and an investigator, from the day of the Decision until the end of the trial, up to 50% of the funds allocated **in principle** to a totally indigent accused, based on the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused and on the basis of a determination of the complexity of this phase of the case at Level 3.

Nonetheless, with all due respect to the Chamber, I do not agree with the *proprio motu* form in which such a Decision was rendered.

I find that the decision of the Chamber resulted from a request of the Accused – and that has always been my belief throughout the deliberations on this Decision.

In 2007 the question of financing the defence team of the Accused was the subject of a number of Decisions rendered on written motions of the Accused[1] by the Registrar,[2] the President of the Tribunal[3] and the pre-trial Judge,[4] **[redacted]**.

Since the Decisions of 2007, in particular the one by the President of the Tribunal, rendered on the submission of the Accused for reconsideration of the two Decisions of the Registrar, the Accused, in compliance with one of the Decisions,[5] only reiterated orally in court before the Chamber[6] the arguments which, according to him, were the basis of his right to financial assistance and the arguments according to which the

[1] "Professor Vojislav Šešelj motion for a decision by Trial Chamber III on financing his defence in accordance with the Statute", Submission number 294, 4 July 2007.
[2] Decisions of 24 January 2007 and 9 February 2007.
[3] "Decision on Appeals against Decisions of the Registry of 4 January 2007 and 9 February 2007" of 25 April 2007.
[4] Following the Decision of the President, Judge Antonetti, as the pre-trial Judge, on 30 July 2007, based on the two motions of the Accused, rendered a decision, only ordering the Registrar to "implement immediately, in respect of the Accused, the procedures applicable to the provision of legal aid in accordance with the Rules and the Directive" and urging the Accused "to provide the Registry with all the useful information to assess his state of indigence and the requisite qualifications of his associates" (p. 18).
[5] In his Decision of 25 April 2007, the President dismissed for lack of jurisdiction, the submission of the Accused for reconsideration of the Registrar's Decisions of 4 January 2007 and 9 February 2007, maintaining that "only the Trial Chamber presently seized with Šešelj's case may consider the issues raised in his Appeals with respect to the Registrar's Decision of 4 January 2007 and Decision of 9 February 2007" (pp. 7 and 8).
[6] The Accused also informed the Chamber many times that he preferred to submit his motions orally as much as possible precisely because of the lack of funds and therefore the impossibility of paying his legal advisers for submissions. Moreover, the oral submissions of the Accused have often been interpreted and treated by the Chamber as formal requests on his part: see, for example the submission

denial of this right constituted a violation of his right to defend himself and therefore of the principle of fairness of the trial, which only the Chamber can guarantee.[7]

He also raised the specific problem of financing the travel and stay in The Hague of his associates and the more general question of his indigence. The Registrar delayed making a final decision on the specific question of indigence because of the absence of cooperation from the Accused in the determination of his income despite requests from the Registry, in accordance with the Decision of the pre-trial Judge.[8]

With regard to requests made by the Accused for the Chamber to intervene on his behalf concerning the problem of financial resources to prepare his defence, the Chamber responded by explaining to him several times that the question of his indigence was under consideration before the Registrar and had to be resolved by the latter on the basis of evidence the Accused furnished to him, since it is the responsibility of the Accused to provide proof of his indigence.[9] Moreover, the Chamber intervened in the question of travel expenses for some of his legal advisers, ordering the Registrar to pay them.[10]

The Accused reiterated several times before the Chamber his refusal to continue his exchanges with the administration concerning his contacts with his legal advisers, the payment of expenses for travel to The Hague for some of them and, more generally, the question of his indigence, for which he maintained that he had provided all the necessary evidence. He argued that, taking into account the number of his requests to the Registrar and numerous contacts with administrative services which did not bring about any solution to the question of financial assistance, the absence of financial

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at the hearing of 12 January 2010, Transcript in French ("T(F)"), 14829, which led to the Chamber's Decision of 10 February 2010 on the motion of the Accused.

[7] With regard to submissions reiterated by the Accused before the Chamber on the questions concerning his associates, their treatment and the financing of his defence, one can familiarise oneself with some of them by reading the following portions of the transcripts that I had the time to find: hearing of 7 February 2008, T(F), 3299-3302; hearing of 13 February 2008, T(F), 3502-3503; hearing of 11 March 2008, T(F), 4704-4708; hearing of 22 April 2008, T(F), 6357-6363; hearing of 23 September 2008, T(F), 9828-9842; hearing of 9 October 2008, T(F), 10582-10587; hearing of 2 December 2008, T(F), 12408-12409; hearing of 11 December 2008, T(F), 12978; hearing of 8 January 2009, T(F), 13012-13013; hearing of 2 March 2010, T(F) 15565-15584 and 15598-15602; hearing of 6 July 2006, T(F), 16241 and T(F), 16347-16355 (at the time, he had still not received the Registrar's decision of 5 July).

[8] *Supra*, footnote 4.

[9] See, for example, the hearing of 7 February 2008, T (F), 3300; hearing of 22 April 2008, T (F), 6360 and 6362-6363; hearing of 23 September 2008, T (F), 9840.

resources from that moment infringed on his right to self-defence which must be ensured by the Chamber:[11] it was therefore a question of a legal, rather than an administrative nature.[12]

Recently, following the last decision of the Registrar of 5 July 2010, the Accused returned to the question of the lack of funding to exercise his right to defence because, as it was linked to the fairness of the trial, he considered that it was not resolved by that Decision.[13]

The fact that he did not bring a motion for reconsideration of that Decision of the Registrar either before the President of the Tribunal or before the Chamber did not imply, in my view, that the Chamber should intervene *proprio motu* to guarantee, as he sought, his right to obtain the funding necessary to ensure his defence. According to the Directive on the Assignment of Defence Counsel, applicable in this case *mutatis mutandis*, the Accused may present a motion for reconsideration before the Chamber and not before the President,[14] which was confirmed by the Decision of the President of 25 April 2007. Moreover, a submission for reconsideration presented by the Accused before the Chamber against the Decision of the Registrar – which had

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[10] See the Decision of 10 February 2010, cited above in footnote 6.
[11] See the hearing of 7 February 2007, T (F), 3301-02. At the hearing of 23 September 2008, T (F), 9828-9841, where, in connection with the restrictions imposed by the Registrar on contacts between the Accused and his associates, the Accused also referred to the question of financing his defence and put it in the following terms: "What I'm asking you to do is to protect my legal adviser", T (F), 9828. And as follows: "You can deny me legal advisers as well, members of the Defence team too. I will continue to defend myself even in that case literally on my own. However, do not forget, you are the ones who are in charge of the fairness of the trial," (T (F), 9839). At the hearing of 11 March 2008, T (F), 4704-4708, recalling again that the question of financial aid to his defence had reached an impasse because of the position taken by the Registrar, the Accused concluded: "I'm not going to insist upon the matter further. You can give thought to the matter and see whether it will be possible for me to present my defence case under those conditions" (T (F), 4707, 4723-4726) and the Presiding Judge replied, "we know what you have just said, and we will address this matter…" (T (F), 4708, 4714-4715).
[12] At the hearing of 9 October 2008, T (F), 10583, he expressed his position in the following terms: "I categorically state that no administrative organ has the right to clip the right to my Defence, neither the Registry nor the President of the Tribunal. And with respect to my elementary right to a defence, I don't want to discuss that with them. The right to my Defence cannot be an administrative issue, and so I address you orally as the Trial Chamber. In my legal system, the legal system of Serbia, orally addressing the Court has the same weight as a written submission, and I suppose that that is the same in the civilised world. What I say in court and is recorded and becomes a record of the proceedings, is the same as a written submission; perhaps less detailed, but nonetheless carrying the same weight. So I have addressed you on that issue." See also: hearing of 23 September 2008, T (F), 9831; hearing of 2 December 2008, T (F), 12409; hearing of 7 May 2009, T (F), 14505-14506.
[13] See the hearing of 7 July 2010, T (F), 16347-16352 and the one of 21 September 2010, T (F), 16406-16408.
[14] See Art. 13 (B) of Directive No. 1/94 (IT/73/Rev. 11).

been clearly contemplated by the Chamber in court[15] – would have been in contradiction with his position to argue directly before the Chamber, in the first instance and not for reconsideration of the Registrar's Decision, that his right to receive financial assistance is inherent in his right to self-defence and, therefore, the fairness of the trial.

In my view, therefore, through its Decision, the Chamber has intervened on the basis of oral requests from the Accused and the argument he submitted regarding the jurisdiction of the Chamber, as the guarantor of the fairness of the trial, to deal with the situation of the lack of funding for the preparation of his defence, with some of its vital elements also appearing in the Decision of the Registrar on indigence.

The Chamber did not intervene directly in the Decision of the Registrar denying the Accused a totally or partially indigent status precisely because of the fact that the Accused did not seize it of a motion for reconsideration of the Registrar's Decision, but rather as the guarantor of the fairness of the trial.

Having many times correctly affirmed its lack of jurisdiction to intervene directly in the question of possible indigence of the Accused – jurisdiction resting in the first instance, according to the Chamber, with the Registrar – the Chamber was simply dealing with an obstacle that threatened to bring the trial to a standstill,[16] which became all the more apparent after the Registrar's negative Decision on indigence. In any case, I believe that the Chamber has always intervened following old and new requests reiterated by the Accused and on his latest more solid claims that he is not able to continue to defend himself at the trial, in a very delicate phase, resembling the 98*bis* procedure and, possibly, the presentation of the Defence case. These multiple requests made by the Accused before the Chamber have only served to highlight the impasse the trial has reached and the fact that such a situation encroaches on the right of the Accused to a fair trial.

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[15] Hearing of 7 July 2010, T (F) 16349 and T (F), 16354-16355.

[16] Hearing of 2 March 2010, T (F), 15576-15584: "I will need at least two years before I start presenting my case. I have still not started working on my case, because I've not had the resources, I've not had the money. My associates are scattered. They haven't been paid for seven years. So you will have to give me at least two years to be able to prepare my case, and that on the condition that all the other problems are resolved. Over a year ago, I promised that I would no longer mention the issue of financing. I gave up on that, because I realised that all the doors were closed." (T (F), 15576). "If I do

The Decision, because of its *proprio motu* form, fails to bring up what happened before the last Decision of the Registrar. In its Decision, in my opinion, the Chamber should have mentioned all this, in order to show the true nature of the requests and arguments reiterated by the Accused before the Chamber on the question of financial aid, which should have been mentioned in the section regarding the arguments of the defence. Therefore the Chamber should have rendered the same Decision on the merits and on the basis of the same arguments, but starting with the numerous requests the Accused has made to the Chamber since the commencement of the trial.

I therefore consider that the Chamber has intervened on the motion of the Accused, convinced of the validity of his argument according to which the Chamber is the first and direct guarantor, in the first instance, of his right to have adequate funds to present his defence, a right inherent in the fairness of the trial. Thus, the Chamber has partially granted, at this stage of the trial, the requests for financial assistance of the Accused without prejudice to his right to be declared totally or partially indigent if he subsequently presents to the Registrar the evidence required to prove such indigence.

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

/signed/
Judge Flavia Lattanzi

Done this twenty-fifth day of November 2010
At The Hague (the Netherlands)

[Seal of the Tribunal]

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not get any funds for my defence from the International Tribunal, that will simply leave me unable to put forward a Defence case." (T (F), 15580).