

**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: 10 August 2011
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President
Registrar: Mr. John Hocking
Decision of: 10 August 2011

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC REDACTED VERSION

**DECISION ON REQUEST FOR REVIEW OF
REGISTRY DECISION REGARDING VISIT OF DEFENCE
TEAM MEMBERS**

The Accused
Mr. Vojislav Šešelj

This is a public redacted version of the “Decision on Request for Review of Registry Decision Regarding Visit of Defence Team Members”, issued confidentially on 6 July 2011.

1. **I, Patrick Robinson**, President 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 (“International Tribunal”), am seised of a request for review filed by Mr. Vojislav Šešelj on 23 March 2011¹ against a decision taken by the Registry in relation to a requested privileged visit by members of his legal team. The Registry responded on 26 April 2011.² Mr. Šešelj received the Registry’s response in Bosnian/Croatia/Serbian on 6 May 2011,³ but did not file a reply.

I. INTRODUCTION

2. Mr. Šešelj is a self-represented accused, currently facing three cases before the International Tribunal. The first proceeding, or main case, against Mr. Šešelj involves allegations of crimes against humanity and violations of the laws and customs of war committed in the former Yugoslavia.⁴ The trial commenced on 7 November 2007 before Trial Chamber III of the International Tribunal.⁵ On 4 May 2011, following the close of the Prosecution case, the Trial Chamber denied Mr. Šešelj application for a judgement of acquittal pursuant to Rule 98 *bis* of the International Tribunal’s Rules of Procedure and Evidence (“Rules”).⁶ The case is now entering the defence phase.

3. The second proceeding involves allegations of contempt of the International Tribunal related to the alleged disclosure of confidential material in a book authored by Mr. Šešelj.⁷ The contempt trial commenced on 22 February 2011 before Trial Chamber II of the International Tribunal, and the Prosecution case closed that same day.⁸ On that date, Mr. Šešelj informed Trial Chamber II that he would not be in a position to present his defence case in the absence of funding for the travel and accommodation of a legal assistant and a case manager, as well as the costs incurred by the

¹ Appeal of Professor Vojislav Šešelj against the Decision of the ICTY Registry Concerning a Visit by his Legal Advisers and Case Manager, filed in B/C/S on 23 March 2011 and in English on 4 April 2011 (“Request”).

² Registry Submission Pursuant to Rule 33(B) Regarding Vojislav Šešelj’s Submission 469 Dated 23 March 2011, 26 April 2011 (“Response”).

³ *Procès-Verbal*, filed 16 May 2011.

⁴ Third Amended Indictment, 7 December 2007.

⁵ T. 16827 (Rule 98 *bis* Decision).

⁶ T. 16885 (Rule 98 *bis* Decision).

⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R.77.3, Public Redacted Version of Second Decision on Prosecution’s Motion under Rule 77 Concerning Further Breaches of Protective Measures (Three Books) Issued on 3 February 2010, 4 February 2010.

⁸ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R.77.3, Scheduling Order, 10 May 2011 (“Scheduling Order”), p. 1.

witnesses he intended to call.⁹ Trial Chamber II then adjourned the proceedings *sine die* pending the resolution of a funding decision related to the main case by the Appeals Chamber.¹⁰

4. A third proceeding against Mr. Šešelj, also involving allegations of contempt, remains at the pre-trial stage and is not at issue in this decision.¹¹

5. Since 6 December 2006, the Registry has accorded Mr. Šešelj, as a self-represented accused, several legal advisors and case managers who have been entitled to engage in privileged communication with him in connection with his cases.¹² From that date, on an exceptional basis, the Registry assumed certain costs related to Mr. Šešelj's defence in the main case, including travel costs of these associates to The Hague.¹³ The Registry bore these costs during the presentation of the Prosecution case in the main case as it investigated Mr. Šešelj's financial means.¹⁴ The Registry terminated this arrangement on 28 November 2008 as it continued its financial investigation.¹⁵ On 6 July 2010, the Registry concluded that Mr. Šešelj had not demonstrated his indigency or partial indigency and therefore was not entitled to any legal aid funded by the International Tribunal.¹⁶

6. On 29 October 2010, Trial Chamber III reversed that decision and ordered the Registry to provide "50% of the funds allocated in principle to a totally indigent accused, to the defence team for the Accused consisting of three privileged associates, a case manager and an investigator".¹⁷ The Appeals Chamber, Judges Güney and Pocar dissenting, affirmed the Trial Chamber's decision on 8 April 2011.¹⁸ On 10 May 2011, Trial Chamber II, which is seised of the contempt case, noted that the Registry had sufficient time to study the implications of the funding decision in the main case on the contempt case and ordered the recommencement of the trial proceedings.¹⁹

7. On 23 February 2011, the Registry considered Mr. Šešelj's request of 22 October 2010 to recognise Mr. Dejan Mirović, as a legal advisor, and Mr. Nemanja Sarović, as a case manager, in

⁹ Scheduling Order, p. 1.

¹⁰ Scheduling Order, p. 1.

¹¹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R.77.4, Public Edited Version of "Decision on Failure to Remove Confidential Information from Public Website and Order in Lieu of Indictment" issued on 9 May 2011, 24 May 2011.

¹² See Response, Annexes I, II.

¹³ See Response, Annex I.

¹⁴ See Response, Annex I.

¹⁵ Response, para. 9.

¹⁶ Decision by Deputy Registrar, 6 July 2010, p. 4.

¹⁷ Redacted Version of Decision on Financing of Defence Filed on 29 October 2010, 2 November 2010 ("Decision of 29 October 2010"), p. 7.

¹⁸ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R33B, Public Redacted Version of the "Decision on the Registry Submissions Pursuant to Rule 33(B) Regarding the Trial Chamber's Decision on Financing of Defence" Rendered on 8 April 2011, 17 May 2011 ("Decision of 8 April 2011"), para. 29, p. 11.

¹⁹ Scheduling Order, pp. 1, 2.

relation to his main case.²⁰ The two individuals had already been recognised in those functions in the contempt case.²¹ At the time, Mr. Boris Aleksić was the only legal advisor recognised in the main case.²² In its decision, the Registry agreed to recognise Mr. Mirović as a legal advisor in the main case.²³ However, the Registry denied the request to recognise Mr. Sarović, [redacted].²⁴

8. Following that decision, on 16 March 2011, Mr. Šešelj requested a privileged visit in The Hague with his two legal advisors, Mr. Aleksić and Mr. Mirović, and his case manager, Mr. Sarović, and asked the Registry to cover their travel costs, including payment of DSA.²⁵ In its decision of 17 March 2011, the Registry reiterated its earlier position that it would exceptionally reimburse travel costs for Mr. Šešelj's legal advisors, Mr. Aleksić and Mr. Mirović, pending the outcome of its appeal of the Decision of 29 October 2010.²⁶ However, the Registry stated that, in line with the "Remuneration Scheme for Self-Represented Accused", it would not authorise any travel costs for his case manager Mr. Sarović "because only travel costs for privileged legal associates can be covered."²⁷

9. In addition, the Registry confirmed that Mr. Aleksić and Mr. Mirović could meet in a privileged setting to discuss the main case.²⁸ However, it noted that, since Mr. Aleksić was recognised in the main case only, he could not participate in privileged meetings about the contempt case.²⁹ In a similar vein, the Registry reiterated that, as a case manager in the contempt case only, Mr. Sarović could not receive information in a privileged setting about the main case.³⁰ The Registry further explained that, [redacted], Mr. Sarović was also not entitled to participate in any meetings in a privileged setting related to the contempt case.³¹

10. On 23 March 2011, Mr. Šešelj sought review of the decisions taken by the Registry on 23 February and 16 March 2011.³²

²⁰ Response, Annex V.

²¹ Response, Annex V.

²² Response, Annex V.

²³ Response, Annex V.

²⁴ Response, Annex V.

²⁵ Response, Annex VI.

²⁶ Response, Annex VI.

²⁷ Response, Annex VI.

²⁸ Response, Annex VI.

²⁹ Response, Annex VI.

³⁰ Response, Annex VI.

³¹ Response, Annex VI.

³² Request, para. 2.

II. DISCUSSION

11. The Request raises two main issues: (a) whether the Registry erred in denying funding for the travel and related DSA expenses of Mr. Šešelj's case manager, Mr. Sarović, in the contempt case; and (b) whether the Registry erred in prohibiting Mr. Sarović from communicating with Mr. Šešelj about the contempt case in a privileged setting.

A. Standard of Review

12. The following standard has been set for the review of administrative decisions made by the Registrar:

A judicial review of such an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgement in accordance with Rule 119 of the Rules of Procedure and Evidence. A judicial review of an administrative decision made by the Registrar in relation to legal aid is concerned initially with the propriety of the procedure by which the Registrar reached the particular decision and the manner in which he reached it.³³

Accordingly, an administrative decision may be quashed if the Registrar:

- (a) failed to comply with the legal requirements of the Directive, or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the "unreasonableness" test).³⁴

13. Unless unreasonableness has been established, "there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative

³³ *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/I-A, Decision on Review of Registrar's Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003 ("Žigić Decision"), para. 13. See also *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010 ("Karadžić Decision of 19 February 2010"), para. 9; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Appeal of OLAD Decision in Relation to Additional Pre-Trial Funds, 17 December 2009 ("Karadžić Decision of 17 December 2009"), para. 18; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.2, Decision on Interlocutory Appeal of the Trial Chamber's Decision on Adequate Facilities, 7 May 2009 ("Karadžić Appeal Decision"), para. 10; *Prosecutor v. Veselin Štjivančanin*, Case No. IT-95-13/1-PT, Decision on Assignment of Defence Counsel, 20 August 2003 ("Štjivančanin Decision"), para. 22.

³⁴ *Žigić Decision*, para. 13. See also *Karadžić Decision of 19 February 2010*, para. 9; *Karadžić Decision of 17 December 2009*, para. 18; *Karadžić Appeal Decision*, para. 10; *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007 ("Krajišnik Decision"), para. 30; *Štjivančanin Decision*, para. 22.

decision is entitled”.³⁵ The onus of persuasion lies on the party challenging the administrative decision to show that: (a) an error of the nature enumerated above has occurred and (b) such an error has significantly affected the administrative decision to his detriment. An administrative decision may only be quashed when both elements are shown.³⁶

B. Funding of Travel

14. Mr. Šešelj argues that the Registry erred in denying the travel costs to The Hague, including DSA, for his case manager, Mr. Sarović.³⁷ In particular, Mr. Šešelj notes that, from December 2006 to September 2008, the Registry assumed the costs of travel in his main case for both his legal advisors and case manager.³⁸ Mr. Šešelj further contends that the case manager plays an important and unique role separate from that of a legal advisor and that without the case manager the team is incomplete.³⁹ Therefore, Mr. Šešelj asserts that the Registry’s willingness to fund the travel of his legal advisors but not his case manager is detrimental to his defence and denies him equality of arms with the Prosecution.⁴⁰ Mr. Šešelj also challenges the Registry’s reliance on its appeal of Decision of 23 October 2010, emphasising that the funding of travel for legal advisers and case managers is separate from the defence budget authorised by Trial Chamber III’s decision.⁴¹

15. The Registry submits that its decision to deny Mr. Šarović funding for travel expenses to The Hague is in-line with the applicable policy and practice regarding self-represented accused.⁴² Although it had previously funded several visits by case managers, the Registry argues that Mr. Šešelj had no legitimate expectation that this practice would continue.⁴³ Specifically, the Registry observes that those decisions were taken on an exceptional basis in the absence of a clear applicable policy.⁴⁴ The Registry notes that, since the Decision of 29 October 2010, the Remuneration Scheme, as supplemented by the Directive on the Assignment of Defence Counsel and the Registry’s Travel and DSA Policy, has applied to Mr. Šešelj’s case.⁴⁵ The Registry notes that,

³⁵ *Žigić* Decision, para. 13. *See also Karadžić* Decision of 19 February 2010, para. 10; *Karadžić* Decision of 17 December 2009, para. 18; *Karadžić* Appeal Decision, para. 10; *Krajišnik* Decision, para. 30.

³⁶ *Žigić* Decision, para. 14. *See also Karadžić* Decision of 19 February 2010, para. 10; *Karadžić* Decision of 17 December 2009, para. 18; *Karadžić* Appeal Decision, para. 10.

³⁷ Request, paras. 7-11.

³⁸ Request, para. 8.

³⁹ Request, paras. 9, 10.

⁴⁰ Request, paras. 9, 11.

⁴¹ Request, para. 7.

⁴² Response, paras. 20-27, 33, 35.

⁴³ Response, para. 20.

⁴⁴ Response, para. 20.

⁴⁵ Response, paras. 21, 22.

according to these instruments, travel expenses are not paid for support staff such as case managers.⁴⁶

16. Although Mr. Šešelj has not been found indigent or partially indigent, the Appeals Chamber has affirmed, nonetheless, Trial Chamber III's order to the Registry to fund Mr. Šešelj's defence in his main case at a rate of 50% of what would be available to a fully indigent accused.⁴⁷ In its submissions, the Registry accepts that this same framework equally applies to Mr. Sarović in the contempt case.⁴⁸

17. Pursuant to the Remuneration Scheme and the Defence Travel and DSA Policy, Mr. Sarović, as a case manager, may have the travel for his initial visit to The Hague during the pre-trial stage of a case paid for by the Registry (albeit without the provision of DSA).⁴⁹ It is not clear from the record whether Mr. Sarović was provided with this travel. In addition, it follows from the Remuneration Scheme that the Registry will pay, within the relevant framework, Mr. Sarović and other members of the Defence team on the case for their work.

18. It is therefore clear that, since the contempt case is at the trial stage,⁵⁰ the Remuneration Scheme and the Defence Travel and DSA Policy do not provide for Mr. Sarović to have his travel expenses paid for by the International Tribunal.⁵¹ Although the Registry could have *exceptionally* authorised the payment of Mr. Sarović's travel—as it did for Mr. Mirović and Mr. Aleksić⁵² and as it had for other case managers⁵³—Mr. Šešelj has not demonstrated that the Registry was required to do so on this occasion. I note that Mr. Mirović, who is a legal advisor in the contempt case, has been authorised to travel to The Hague. Moreover, travel expenses for case managers could be covered by other funds made available to the Defence team under the Remuneration Scheme.⁵⁴ To the extent that Mr. Sarović does not utilise other available funds to travel to The Hague, Mr.

⁴⁶ Response, paras. 23, 35.

⁴⁷ Decision of 8 April 2011, paras. 28, 29. *See also* Decision of 29 October 2010, p. 7.

⁴⁸ *See* Response, para. 22 (“[F]rom 29 October 2010 the Remuneration Scheme has been the applicable policy covering the Accused's requests for funding of travel of his defence team members.”) *See also* Response, paras. 21-26.

⁴⁹ Remuneration Scheme, preamble (incorporating the Defence Travel and DSA Policy). Defence Travel and DSA Policy, Part I(A)(7).

⁵⁰ *See* Scheduling Order, p. 1.

⁵¹ Remuneration Scheme, preamble (incorporating the Defence Travel and DSA Policy). Defence Travel and DSA Policy, Part I(B).

⁵² *See* Response, paras. 24, 25.

⁵³ The Registry has previously agreed to assume the cost of repeat travel and other related expenses for the case manager in the main case, notwithstanding its initial indication that only the “first trip” for the case manager would be covered. It did so “exceptionally, because [Mr. Šešelj] had not taken advantage of other facilities offered”. *See* Response, Annexes I, II.

⁵⁴ Response, para. 24.

Mirović would be in a position to communicate any instructions from Mr. Šešelj in relation to this matter.

19. Accordingly, Mr. Šešelj has not shown that the Registry acted inappropriately in refusing to pay for Mr. Sarović's travel to The Hague and related DSA expenses.

C. Privileged Visit

20. Mr. Šešelj argues that the Registry erred in denying him communication in a privileged setting with Mr. Sarović.⁵⁵ [Redacted.] Mr. Šešelj asserts that his case manager fulfils a specific and important function and that he cannot fulfil that function without the opportunity to participate in privileged meetings with Mr. Šešelj and his legal advisors.⁵⁶ [Redacted.]

21. The Registry submits that its decision to refuse to allow Mr. Šešelj to meet with Mr. Sarović in a privileged session is consistent with the applicable Rules of Detention and practice.⁵⁷ The Registry notes that case managers are not entitled to separate privileged meetings with an accused, but that, consistent with practice, their presence in privileged meetings with a legal advisor does not change the nature of the setting.⁵⁸ [Redacted.]

22. [Redacted.]

23. [Redacted.] Mr. Šešelj's cursory submissions on this matter do not demonstrate that it was unreasonable for the Registry to restrict Mr. Sarović's privileged access.

24. I further note that Mr. Šešelj remains entitled to meet in a privileged setting with Mr. Mirović, his legal advisor in the contempt case. Mr. Šešelj also continues to be able to meet in a non-privileged setting with Mr. Sarović. In this context, Mr. Šešelj is still in a position to instruct Mr. Sarović either in a non-privileged setting or through Mr. Mirović. Mr. Šešelj has therefore not shown that the Registry acted inappropriately [redacted].

⁵⁵ Request, paras. 10-14.

⁵⁶ Request, paras. 9, 10.

⁵⁷ Response, paras. 17-19, 28-32, 34, 36-39.


⁵⁸ Response, para. 18.

III. DISPOSITION

25. For the foregoing reasons, the Request is hereby DISMISSED.

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

Done this tenth day of August 2011,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

[Seal of the International Tribunal]