



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 November 2011
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 November 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON ACCUSED'S SUBMISSION 479 ON THE MONITORING OF
HIS PRIVILEGED COMMUNICATIONS**

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”);

SEIZED of the submission filed as a public document on 1 November 2011 by Vojislav Šešelj (“Accused”), requesting that the Chamber set aside the decision of the Registry, taken pursuant to Rule 65 of the Rules of Detention,¹ to monitor his privileged telephone conversations with members of the defence team who benefit from the status of privileged associates² (“Registry Decision”)³ and, more specifically, that the Chamber show greater firmness toward the Registry than it has in the past (“Submission”),⁴

NOTING the “Redacted Version of the 'Decision on Monitoring the Privileged Communications of the Accused with Dissenting Opinion by Judge Harhoff in Annex' Filed on 27 November 2008”, filed on 1 December 2008 (“Decision of 27 November 2008”), in which the Chamber decided by a majority that it was competent to assess whether the decision to monitor the privileged communications of the Accused had the effect of infringing on the right of the Accused to a fair trial and deemed that the fact that this competence was not specifically envisaged by Rule 65 (B) of the Rules of Detention did not undermine the inherent competence of the Chamber pursuant to the Statute of the Tribunal,⁵

¹ Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“Rules of Detention”), adopted on 15 May 1994, amended on 21 July 2005.

² Several member of the defence team of the Accused have signed a confidentiality agreement and were granted the status of “privileged associates” by the Registry of the Tribunal. The privileged associates are bound by the provisions of the professional code of ethics and by the *standard* that applies to Defence Counsel. As such, the privileged associates have access to confidential information in the case and to the courtrooms, benefit from privileged communications with the Accused covered by professional secret and periodic visits to the United Nations Detention Unit.

³ The Chamber notes that it was not sent the decision on monitoring the privileged communications of the Accused adopted by the Registry and that this decision is not available on the Tribunal’s database.

⁴ “Submission no. 479 – Notification/Warning of New Breach of Human and Procedural Rights of Professor Vojislav Šešelj by the ICTY Registry in Case No. IT-03-67”, public, 1 November 2011. The Accused filed the Submission in BCS on 19 October 2011.

⁵ “Redacted Version of the 'Decision on Monitoring the Privileged Communications of the Accused with Dissenting Opinion by Judge Harhoff in Annex' Filed on 27 November 2008”, public, 1 December 2008, paras 20 and 21.

NOTING the “Decision on the Registry Submission Pursuant to Rule 33 (B) Following the President’s Decision of 17 December 2008”, rendered as a public document on 9 April 2009, in which the Appeals Chamber reversed the Decision of 27 November 2008 on the grounds that: (1) Rule 65 (B) of the Rules of Detention confers on President of the Tribunal the power to reverse any decision to monitor communications between a detainee and his Counsel taken by the Registry pursuant to this Rule, and (2) on an administrative matter, the Trial Chamber cannot make use of the powers vested upon it in order to guarantee the fairness of a trial before exhausting any other recourses in the matter,⁶

CONSIDERING that the Chamber finds that in this case the Accused has not exhausted all recourses envisaged in the Rules of Detention, meaning that the Chamber is not able at this stage to assess whether the Decision of the Registry is liable to infringe the right of the Accused to a fair trial,

CONSIDERING that the Chamber consequently considers that it is up to the Accused to seize, should he wish to do so, the President of the Tribunal of the grievances presented in this Submission,

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54 and 73 of the Rules of Procedure and Evidence and 65 (B) of the Rules of Detention,

DENIES the Submission.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this tenth day of November 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, “Decision on the Registry Submission Pursuant to Rule 33 (B) Following the President’s Decision of 17 December 2008”, public, 9 April 2009, paras 19 and 20.