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

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IN TRIAL CHAMBER III

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

Registrar: **Mr John Hocking**

Decision of: **21 March 2012**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

With a concurring separate opinion from Presiding Judge Jean-Claude Antonetti in public annex

DECISION ON ACCUSED'S CLAIM FOR DAMAGES ON ACCOUNT OF ALLEGED VIOLATIONS OF HIS ELEMENTARY RIGHTS DURING PROVISIONAL DETENTION

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

1. Trial Chamber III 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 ("Chamber" and "Tribunal", respectively) is seized of a submission by Vojislav Šešelj ("Accused"), filed as a public document on 27 January 2012, in which the Accused requests damages in the total amount of two million euros on the ground of alleged violations of his fundamental rights since his arrest ("Submission").[1] In this respect, the Accused submits (i) that he surrendered voluntarily to the Tribunal at his own cost on 24 February 2003, after having been informed that the indictment against him had been confirmed;[2] (ii) that since being placed in provisional detention on 24 February 2003 and for nine years, several of his fundamental rights were violated by the Tribunal[3] and (iii) that the duration of his detention is exceedingly excessive, bearing in mind in particular the recent report submitted by the President of the Tribunal ("President") to the Security Council of the United Nations, according to which the judgement in the present case will not be rendered before the end of 2012, or the beginning of 2013, meaning that the appeals procedure is projected for 2015 or 2016.[4] The Office of the Prosecutor ("Prosecution") did not file a response to the Submission.

2. In support of his Submission, the Accused raises nine main grounds[5] that the Chamber will consider below by grouping them into subjects.

II. DISCUSSION

A. Preliminary Observations

[1] "Claim for Damages on Account of Violation of Elementary Rights of Professor Vojislav Šešelj During Nine Years of Detention", 27 January 2012 (public), paras 3 to 4 and 64.
[2] Submission, para. 2. According to the Submission, the Accused had already informed the public and the Tribunal that he would surrender to the Tribunal voluntarily after being officially summoned. Even before being officially summoned, the Accused allegedly attempted to come to the Netherlands several times, notably after 5 October 2000. Furthermore, the Accused alleges that the Tribunal did not reimburse his flight ticket (*ibid.*). The Chamber notes that during his closing arguments, the Accused pointed out that he came to The Hague "to implement a project with the [...] Queen" (Defence Closing Arguments, 20 March 2012, T. 17535 (draft version)).
[3] Submission, para. 3.
[4] Submission, para. 3.
[5] Submission, para. 64.

3. The Accused is seeking from the Chamber to allow him, *post factum*, to exceed the word limit set out in the Practice Direction on the Length of Briefs and Motions.[6] The Accused justifies this excessive length in the very content of the Submission that pertains to the protection of his fundamental rights.[7] Even though the Chamber is not satisfied that the Accused has demonstrated the existence of exceptional circumstances that justify filing a submission more than four times the limit allowed,[8] the Chamber deems that it is appropriate to allow the Accused to exceed the said limit, considering the number of allegations presented in the Submission.[9]

4. Nevertheless, the Chamber recalls that the Accused's submissions have almost systematically exceeded the word limit allowed. Without bringing into question the full liberty that the parties have with respect to the contents of their written submissions, the Chamber encourages the parties once again, in general, to exercise concision in their written submissions.[10]

A. Allegations of Imposing Counsel on the Accused Against His Will

1. Arguments of the Accused

5. In his Submission, the Accused argues that from May 2003 to October 2006 and from November to December 2006, against his will and in violation of the provisions under Article 21 of the Statute allowing an accused to defend himself, the Tribunal allegedly attempted to impose counsel on him – stand-by or permanent – and seeks on this ground damages in the amount of 300,000 euros.[11] The Accused points out that the decision imposing counsel on him was overturned by the Appeals Chamber in October 2006, but that on 8 November 2006, the Tribunal attempted to

[6] Submission, para. 1 referring to the "Practice Direction on the Length of Briefs and Motions" (IT/184 Rev. 2) 16 September 2005 ("Practice Direction"). The Chamber notes that the total word count of the Submission is 13,540 words whereas the Practice Direction sets the word limit at 3,000 words (Practice Direction, para. 5).
[7] Submission, para. 1.
[8] Practice Direction, para. 7.
[9] The Chamber notes furthermore that as it did not file a response to the Submission, the Prosecution did not object to the length of the Submission.
[10] The Chamber notes, for example, that paragraphs 5 to 12 of the Submission, covering eight pages, are merely a review of the articles of the Statute of the Tribunal ("Statute") and international instruments for the protection of human rights, which are then reiterated in the body of the Submission.
[11] Submission, para. 12. *See* also, Defence Closing Arguments, T(E) of 14 March 2012, p. 17334 (draft version).

impose counsel on him once again.[12] From this moment and until his right to defend himself was finally acknowledged by the Appeals Chamber on 8 December 2006,[13] he was forced to undergo a hunger strike for one month, thereby endangering his life.[14]

2. Analysis

a) Procedural Background

6. On 24 February 2003, the Accused surrendered to the Tribunal to stand trial.[15] In a letter dated 25 February 2003 sent to the Registrar of the Tribunal ("Registrar") and during his initial appearance on 26 February 2003, the Accused indicated that he intended to defend himself.[16]

7. In the Decision of 9 May 2003, Trial Chamber II of the Tribunal ("Chamber II") ordered the Registrar to assign a standby counsel for the Accused seeing as the Accused was, amongst others, "increasingly demonstrating a tendency to act in an obstructionist fashion while at the same time revealing a need for legal assistance".[17]

8. On 5 September 2003, the Registrar assigned Mr Aleksandar Lazarević as standby counsel for the Accused.[18] On 16 February 2004, the Registrar withdrew assignment of this counsel and replaced him with Mr Tjarda van der Spoel[19].

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[12] Submission, para. 12. The Chamber deduces that the Accused is referring to *The Prosecutor v. Vojislav Šešelj,* Case No. IT-03-67-AR73.3, "Decision on Appeal against the Trial Chamber's Decision on Assignment of Counsel", 20 October 2006 (public) ("Decision of 20 October 2006").
[13] Submission, para. 12. The Chamber deduces that the Accused is referring to *The Prosecutor v. Vojislav Šešelj,* Case No. IT-03-67-AR73.4, "Decision on Appeal against the Trial Chamber's Decision (No. 2) on Assignment of Counsel", 8 December 2006 (public) ("Decision of 8 December 2006").
[14] Submission, para. 12. The Accused places this month-long period between 10 November 2006 and 8 December 2006. *See* also Defence Closing Arguments, T(E) of 14 March 2012, p. 17338 (draft version).
[15] *See* notably, Initial Appearance of 26 February 2003, p. 2.
[16] Initial Appearance, T(E) of 26 February 2003, pp. 1 to 6; *see* also Decision of 20 October 2006, para. 2.
[17] *The Prosecutor v. Vojislav Šešelj,* Case No. IT-03-67-PT, "Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence", 9 May 2003 (public), para. 23.
[18] *The Prosecutor v. Vojislav Šešelj,* Case No. IT-03-67-PT, "Decision", 5 September 2003 (public), p. 2.
[19] *The Prosecutor v. Vojislav Šešelj,* Case No. IT-03-67-PT, "Decision", 16 February 2004 (public), p. 2. The Registrar revoked the status of Mr Aleksandar Lazarević as standby counsel on the ground that there was a conflict of interest as Mr Aleksandar Lazarević had initiated proceedings against the Accused before a national court following allegations by the Accused against Mr Aleksandar Lazarević and his family.

9. In the Decision of 21 August 2006, Trial Chamber I of the Tribunal ("Chamber I")[20] assigned counsel to represent the Accused in his trial, "effective immediately" and instructed the standby counsel at the time to continue to defend the Accused in the interim.[21] The Accused informed the Registry of the Tribunal ("Registry") that he did not wish to participate in the selection of his counsel and reiterated his wish to represent himself.[22]

10. On 30 August 2006, the Deputy Registrar of the Tribunal ("Deputy Registrar") withdrew the assignment of Mr Tjarda van der Spoel as standby counsel for the Accused and, subject to the decision of the Appeals Chamber on the interlocutory appeal of the Decision of 21 August 2006, assigned Mr David Hooper as the defence counsel for the Accused.[23] The Deputy Registrar also assigned Mr Andreas O'Shea as co-counsel for the defence of the Accused on 13 September 2006.[24]

11. In the Decision of 20 October 2006 the Appeals Chamber reversed the Decision of 21 August 2006 on the ground that no specific warning was issued to the Accused before assigning him defence counsel.[25]

12. In the Order of 25 October 2006, Chamber I ordered that a standby counsel be appointed immediately to assist the Accused.[26] The Accused requested certification to appeal the Order of 25 October 2006, which was denied by Chamber I.[27]

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[20] On 3 May 2006, the present case was assigned to Chamber I (*see The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Order Reassigning a Case to a Trial Chamber", 4 May 2006 (public)).
[21] *The Prosecutor v.. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Assignment of Counsel", 21 August 2006 (public) ("Decision of 21 August 2006"), para. 79: "[t]he conduct of the Accused as a whole – obstructionist and disruptive behaviour; deliberate disrespect for the rules; intimidation of, and slanderous comments about, witnesses – leads the Chamber to conclude that there is a strong indication that his self-representation may substantially and persistently obstruct the proper and expeditious conduct of a fair trial". *See ibid.*, para. 81 and p. 25.
[22] *See* Decision of 20 October 2006, para. 4.
[23] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision", 30 August 2006 (public), p. 2.
[24] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision", 13 September 2006 (public), p. 2.
[25] Decision of 20 October 2006, para. 52: "The Appeals Chamber hereby explicitly warns Šešelj that, should his self-representation subsequent to this Decision substantially obstruct the proper and expeditious proceedings in his case, the Trial Chamber will be justified in promptly assigning him counsel after allowing Šešelj the right to be heard with respect to his subsequent behaviour".
[26] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Order Concerning Appointment of Standby Counsel and Delayed Commencement of Trial", 25 October 2006 (public) ("Order of 25 October 2006").
[27] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Application for Certification to Appeal Order of 25 October 2006", 30 November 2006 (public).

13. The Accused began a hunger strike on 11 November 2006.[28] The Accused put forth a number of requests concerning, amongst others, the facilities which should be given to him so that he could prepare and present his defence case,[29] including access to all the documents in the Prosecution's possession in hard copy and in Serbian.[30] In an oral decision rendered during the pre-trial conference on 27 November 2006, Chamber I found that the fact that the Accused had been representing himself since 20 October 2006 "has [...] obstructed the proper and expeditious conduct of the proceedings"[31] and consequently, assigned standby counsel to "permanently take over the conduct of the Defence from the Accused", pursuant to the Order of 25 October 2006.[32] In the same Decision, Chamber I requested the Registry to appoint Mr Tjarda van der Spoel as independent counsel for the Accused so that he might take any necessary action in relation to an appeal against the Oral Decision of 27 November 2006.[33] On 4 December 2006, Mr Tjarda van der Spoel filed a request for certification to appeal the Decision of 27 November 2006.[34] On 5 December 2006, the Chamber granted the request.[35]

14. In the Decision of 8 December 2006, the Appeals Chamber reversed the Order of 25 October 2006 and instructed Chamber I not to assign standby counsel to the Accused, unless he exhibited obstructionist behaviour to the extent that the Trial

[28] *See* Decision of 8 December 2006, paras 8 and 14.
[29] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Financing the Defence of the Accused", 30 July 2007 (public) ("Decision of 30 July 2007"), para. 6 referring to "Registry Submission Pursuant to Rule 33(B) of the Rules Regarding Vojislav Šešelj's Motion for a Decision by the Trial Chamber on Financing his Defence", 29 June 2007 (public), para. 25 and "Decision on Appeals Against Decisions of the Registrar of 4 January and 9 February 2007", 25 April 2007 (public), para. 5.
[30] *See The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Motion Number 289 Regarding Form of Disclosure", 7 June 2007 (public) ("Decision of 7 June 2007"), para. 9 referring to "Urgent Order to the Dutch Authorities Regarding the Health and Welfare of the Accused", 6 December 2006 (public), paras 1 and 3.
[31] Pre-Trial Conference, T(E) of 27 November 2006, pp. 824 and 825 ("Oral Decision of 27 November 2006"). *See* also "Decision on Request for Certification to Appeal Decision (No. 2) on Assignment of Counsel", 5 December 2006 (public) ("Decision of 5 December 2006"), para. 1.
[32] Pre-Trial Conference, T(E) of 27 November 2006, p. 825.
[33] Pre-Trial Conference, T(E) of 27 November 2006, p. 825. *See* also Decision of 5 December 2006, para. 1. Chamber I set out the reasons for its Oral Decision on 27 November 2006 ("Reasons for Decision (No. 2) on Assignment of Counsel", 27 November 2006 (public) ("Decision of 27 November 2006").
[34] "Request for Certification Pursuant to Rule 73(B) to Appeal Against the Trial Chamber Oral Decision to Assign Counsel to the Accused", 4 December 2006 (public).
[35] Decision of 5 December 2006, para. 7.

Chamber was fully satisfied that, in order to ensure a fair and expeditious trial, he would require the assistance of standby counsel.[36]

15. In the Order of 20 February 2007 and in light of the trial management and case distribution needs, the President assigned the present case to the present Chamber.[37] The trial began on 7 November 2007 with the Accused representing himself.[38]

16. In the Motion of 29 July 2008, the Prosecution sought, on the one hand, for the Accused to be assigned counsel for the remainder of the trial due to allegations, amongst others, of a campaign of witness intimidation – both in and out of the courtroom – and, on the other, to adjourn the hearings until the Chamber ruled on the said Motion.[39] In the Order of 15 August 2008, the Chamber denied the Motion to suspend the hearings.[40] In the Decision of 24 March 2009, the Chamber (by a majority with Judge Antonetti partially dissenting), denied the Motion to assign Counsel in respect of the alleged conduct of the Accused towards witnesses inside of the

[36] Decision of 8 December 2006, paras 28 and 30.
[37] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Order Reassigning a Case to a Trial Chamber", 20 February 2007 (public).
[38] Prosecution Opening Statements, T(E) of 7 November 2007, p. 1786 *et seq.*
[39] "Prosecution's Motion to Terminate the Accused's Self-Representation", 29 July 2008 (confidential and *ex parte* with annexes; confidential *inter partes* version filed on 30 July 2008 with annexes filed on 1 August 2008; public version filed on 8 August 2008) ("Motion of 29 July 2008"), paras 1, 31 to 44, 135 and 137(a). The Prosecution argued that inside the courtroom, the Accused did not respect the Rules, that he misused confidential information, that he refused to follow the Chambers orders, that he intimidated and made slanderous comments to witnesses, that he insulted and baselessly attacked the integrity of the Tribunal and its organs, injected false and fanciful allegations into the trial, used a variety of obstructionist tactics to thwart or hinder the expeditiousness and fairness of the trial, used the latter to make political speeches and is unable to represent himself. The Prosecution also alleged that there was a campaign of witness intimidation and allowing the remaining witnesses to be heard under such conditions would endanger the integrity of the proceedings (*see* also, Procedural Issues, T(E) of 14 January 2009, pp. 13357 to 13358 (closed session)). The Chamber notes that subsequent to the Motion of 29 July 2008, the Prosecution filed an Addendum as a follow-up to this Motion on 14 November 2008 ("Prosecution's Urgent Addendum to Motion to Terminate the Accused's Self-Representation; Request for an Order for the Immediate Cessation of Violations of Protective Measures for Witnesses ; and Notification of Intent to Invoke Rule 68(iv)", 14 November 2008 (confidential) and "Annexes in Support of Prosecution's Urgent Addendum to Motion to Terminate the Accused's Self-Representation", 17 November 2008 (confidential)). During the hearing of 14 January 2009, the Prosecution reiterated its request for counsel to be imposed on the Accused (Procedural Issues, T(E) of 14 January 2009, pp. 13357 to 13358 (closed session) ("Oral Motion of 14 January 2009")). During this same hearing, the Chamber indicated that it would join the Oral Motion of 14 January 2009 and the Addendum and rule in one and the same decision on both these motions (Procedural Issues, T(E) of 14 January 2009, p. 13363 (closed session)). The Prosecution also filed a Supplement to the Motion of 29 July 2008 ("Prosecution's Supplement to its Motion to Terminate the Accused's Self-Representation", 28 August 2009 (public with confidential and *ex parte* annexes)).
[40] "Order Regarding the Resumption of Proceedings", 15 August 2008 (public), p. 3. This order was upheld by the Appeals Chamber on 16 September 2008 (*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.8, "Decision on Prosecution's Appeal against the Trial Chamber's Order Regarding the Resumption of Proceedings", 16 September 2008 (public), para. 25).

courtroom and ordered a stay of its ruling relating to conduct outside of the courtroom.[41] In the Decision of 24 November 2009, the Chamber definitively denied the Motion of 29 July 2008 relating to the Accused's conduct outside of the courtroom, finding that it was not appropriate at this stage in the proceedings to assign counsel and ordered the resumption of hearings of the remaining witnesses.[42]

17. The trial resumed on 12 January 2010[43] with the Accused representing himself until the close of hearings on 20 March 2012.

b) Conclusions of the Chamber

18. In light of the foregoing, the Chamber notes that in its Decision of 8 December 2006, the Appeals Chamber acknowledged that the Accused's objection – namely that Chamber I failed to respect his right to self-representation – was well-founded and, consequently, it restored the said right to the Accused.[44] Therefore, the Accused correctly exercised the effective remedies available to him and it was decided in his favour. Consequently, and taking into account the fact that the error committed by Chamber I was immediately rectified by the Decision of 8 December 2006 without prejudice to the Accused, the latter cannot claim that his right to self-representation was violated by the Tribunal, much less seek damages on this basis. The Chamber recalls furthermore that since the trial resumed before the present Chamber, the Accused has never been prevented from exercising his right to self-representation.

19. With respect to the alleged link made by the Accused between the above-mentioned decisions rendered by Chamber I, his hunger strike and the worsening state

[41] "Decision Regarding Prosecution's Urgent Addendum and Oral Application of 14 January 2009", 24 March 2009 (confidential and *ex parte*; confidential *inter partes* version filed on the same date) ("Decision of 24 March 2009"), para. 22. *See* also "Partially Dissenting Opinion of Presiding Judge Jean-Claude Antonetti from the Decision Regarding Prosecution's Urgent Addendum and Oral Application of 14 January 2009", 24 March 2009 (confidential and *ex parte*; confidential *inter partes* version filed on the same date).

[42] "Public Version of the "Consolidated Decision on Assignment of Counsel, Adjournment and Prosecution Motion for Additional Time with Separate Opinion of Presiding Judge Antonetti in Annex", 24 November 2009 (public) ("Decision of 24 November 2009), paras 59 to 87 and 122. With the Decision of 15 December 2009, the Chamber denied the Prosecution's request for certification to appeal the portion of the Decision of 24 November 2009 relating to the assignment of Counsel (*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Prosecution Request for Certification to Appeal Assignment of Counsel in Consolidated Decision of 23 November 2009", 15 December 2009 (confidential)).

[43] Procedural Issues, T(E) of 12 January 2010, p. 14821. See also "Scheduling Order", 8 December 2009 (confidential); Pre-Trial Conference, T(E) of 24 November 2009, pp. 14819 to 14820.

of his health, the Chamber recalls the terms of the Decision of 8 December 2006, according to which the Accused "has made a choice to undertake a [hunger strike], and he has purportedly done so because of his opposition" to the Order of 25 October 2006.[45] Consequently, the Tribunal cannot be held responsible for any potential consequences of such a choice on the Accused when legitimate and established remedies were available to him.

C. Alleged Violation of the Right to be Informed of the Grounds for His Arrest and of His Rights

1. Arguments of the Accused

20. The Accused argues that everyone who is arrested must be notified as soon as possible of the charges against them so that they can challenge the legality of their arrest or detention and, if appropriate, start preparing their defence.[46] The Accused submits that, in violation of this fundamental principle, he was not informed officially of the reasons for his arrest and detention, or of his rights, notably the right to counsel, and that he was unable – to this day – to become acquainted with all the legal sources cited by the Trial Chamber in its decisions and by the Prosecution in its submissions.[47] In his opinion, this last alleged violation also pertains to the principle of equality of arms.[48] It is on these grounds that the Accused seeks damages in the amount of 100,000 euros.[49]

21. The Accused alleges that the only sources of information available to him about the real reasons for his detention were the books authored by Carla Del Ponte

[44] Decision of 8 December 2006, para. 26.
[45] Decision of 8 December 2006, para. 14.
[46] Submission, paras 15 to 16, 22. Amongst others, the Accused refers to the following texts: Article 5 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted on 4 November 1950, as amended by the provisions of Protocol No.14 (CETS No. 194) from the date of its entry into force on 1 June 2010) ("ECHR"); Articles 9 (2) and 14 (3) (a) of the International Covenant on Civil and Political Rights (adopted on 16 December 1966) ("ICCPR"); Article 8 (2) (b) of the American Convention on Human Rights (adopted on 22 November 1969) ("ACHR"); Principle 13 of the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, Doc. UN A/RES/43/173, 9 December 1988 ("Body of Principles on Detention").
[47] Submission, paras 15 to 21. The Chamber notes that the Accused did not specify either the period or the content of the decisions and motions he mentioned.
[48] Submission, para. 17.
[49] Submission, para. 18.

and Florence Hartmann several years after his arrest.[50] According to the Accused's interpretation of these publications, he was arrested so that he could be removed from the political scene in Belgrade because he posed a threat to the new pro-Western government, and US and British intelligence services that had infiltrated the organs of the Tribunal sought to "liquidate" him.[51]

2. Analysis and Conclusions of the Chamber

22. Article 21 (4) (a) of the Statute stipulates that any person charged by the Tribunal shall have the right to be "informed promptly and in detail in a language which he understands of the nature and cause of the charges against him".

23. The Chamber also recalls that, under the terms of Rule 53 *bis* (A) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the indictment shall be "effected personally on the accused at the time the accused is taken into custody or as soon as reasonably practicable thereafter". Furthermore, pursuant to Rule 62 (A) (i) to (iii) of the Rules,

> Upon transfer of an accused to the seat of the Tribunal, the President shall forthwith assign the case to a Trial Chamber. The Accused shall be brought before that Trial Chamber or a Judge thereof without delay, and shall be formally charge. The Trial Chamber or the Judge shall:
>
> (i) satisfy itself, himself or herself that the right of the accused to counsel is respected;
>
> (ii) read or have the indictment read to the accused in a language the accused understands, and satisfy itself, himself or herself that the accused understands the indictment;
>
> (iii) inform the accused that, within thirty days of the initial appearance, he or she will be called upon to enter a plea of guilty or not guilty on each count but that, should the accused so request, he or she may immediately enter a plea of guilty or not guilty on one or more counts.

24. With respect to notification of the charges, the Chamber recalls that, in accordance with the aforementioned provisions, during his initial appearance in court on 26 February 2003, the Accused was read the Initial Indictment, including the

[50] Submission, paras 19 to 20. *See* also Defence Closing Arguments, T(E) of 14 March 2012, pp. 17333 to 17334 (draft version) and 20 March 2012, T(E). 17467 and 17477 (draft version).
[51] Submission, paras 19 to 21. *See* also Defence Closing Arguments, T(E) of 14 March 2012, pp. 17333 to 17334 (draft version).

charges against him.[52] During this same hearing, the Accused acknowledged that he received a copy of the Initial Indictment in a language that he understands.[53] Consequently, the Chamber finds that the Accused cannot claim that the Tribunal failed to inform him of the charges against him.

25. With respect to the reasons for the arrest and provisional detention of an accused, the Chamber points out that the very charges of the indictment, as confirmed by a Judge of the Tribunal pursuant to Rules 28 and 47 of the Rules, serve as a basis for issuing an arrest warrant.[54] Once an accused has been duly notified of the charges against him pursuant to the procedure recalled above, the accused is also thereby informed of the reasons for his arrest. Furthermore, the Rules state that "once detained, an accused may not be released except upon an order of a Chamber" following, amongst other things, a request duly formulated by an accused.[55] The Accused did not seize the present Chamber of such a request and, consequently, continued to be provisionally detained for the duration of his trial, which is still ongoing.

26. Finally, with respect to the allegations regarding being notified of his rights and the possibility of consulting legal documents, the Chamber rejects these arguments as being unfounded. The Accused has not provided any details to support his allegations and the Chamber is not in a position to enter into a hypothetical and speculative debate in this respect.

D. Alleged Refusal to Disclose Hard Copies of Documents to the Accused in a Language He Understands

1. Arguments of the Accused

27. The Accused states that anyone who is arrested, charged or detained has the right to be informed of the reasons for his arrest or detention and of his rights in a

[52] Initial Appearance, T(E) of 26 February 2003, pp. 2 to 42, referring to *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-I, "Indictment", 15 January 2003 ("Initial Indictment"). The current version of the Indictment was filed on 7 December 2007 ("Indictment").
[53] Initial Appearance, T(E) of 26 February 2003, p. 43, referring to the Initial Indictment.
[54] Article 47 (H) (i) of the Rules. *See The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-I, "Confirmation of Indictment and Order for the Warrant for Arrest and Surrender", 14 February 2003 (public).
[55] Articles 65 (A) and (B) of the Rules. *See* also *infra*, paras 88 and 92.

language he understands.[56] The Accused submits that the Tribunal had for years, and until his hunger strike in 2006, refused to disclose documents to him in hard copy and in a language that he understands – namely Serbian – and requests on this ground damages in the amount of 100, 000 euros.[57]

2. Analysis and Conclusions of the Chamber

28. In respect of the alleged lack of disclosure of documents in hard copy and in Serbian, the Chamber deems that the Submission does not provide any evidence to support the said allegations. The Chamber cannot be certain about the nature of the documents that the Accused allegedly did not receive in a language he understands simply from reading the Submission, nor that the Accused had exhausted all the remedies available to him in respect to this issue.

29. The Chamber recalls nevertheless that on 8 December 2006, the Registrar granted the Accused's requests regarding disclosure in hard copy and in Serbian of all the documents in the Prosecution's possession.[58] Contrary to the Accused's allegations and as proven by the *procès-verbaux* of reception signed by him, the Accused receives translations into Bosnian/Croatian/Serbian ("BCS") of all the documents in the case-file in a systematic and timely fashion. Furthermore, in order to better guarantee his procedural rights, all the deadlines applicable to the Accused begin to run from the date he received the translations into BCS of the relevant documents.[59] Consequently, the Chamber cannot find any violations of the Accused's rights on the basis alleged in the Submission.

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[56] Submission, para. 22, notably referring to Principle 14 of the Body of Principles on Detention.
[57] Submission, paras 22 to 24. *See* also Defence Closing Arguments, T(E) of 14 March 2012, pp. 17336 and 17338 (draft version).
[58] *See* "Decision", 8 December 2006 (confidential) enclosed in confidential Annex VI to "Registry Submission Regarding Questions Raised in the Chamber's Scheduling Order of 1 December 2006", 15 December 2006 (public with confidential annexes and confidential and *ex parte* annexes). *See* also Defence Closing Arguments, T(E) of 14 March 2012, p. 17338 (draft version).
[59] See in this sense *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial", public, 15 November 2007 (public), annex to the Order, para. 32: "As concerns the filing of written submissions, the practice set in place during the pre-trial phase of this case shall be maintained. Accordingly, for the Accused, the time limits set out in Rule 126 *bis* of the Rules, or by any decision or order of the Chamber, shall begin to run only after he has received the relevant documents in a language he understands, with the date indicated on the transcript being authoritative. For the Prosecution, the time limits indicated in Rule 126 *bis*, or in any decision or order of the Chamber, shall begin to run as of the date of filing at the Registry of the said submission in one of the Tribunal's two working languages".

E. Alleged Violation of the Accused's Right to Legal Assistance and the Adequate Time and Facilities to Prepare His Defence

1. Arguments of the Accused

30. The Accused submits that the Tribunal, over a number of years, violated his right to legal assistance and seeks on this ground damages in the amount of 200,000 euros.[60] According to the Accused, the right to adequate time and facilities to prepare his defence and communicate with his counsel includes allowing an accused to communicate with his counsel in confidence.[61] The Accused argues that for almost four years and until 2006, the Tribunal denied him the right to meet with his legal advisers and his case manager, and that the first privileged communication took place on 21 December 2006.[62] He alleges that since 29 September 2008, privileged telephone conversations and privileged visits have been prohibited and that in October 2010, the Registry rendered a decision prohibiting his privileged communication once again.[63]

31. The Accused argues, furthermore, that the Registry violated his right to legal assistance by "eliminating" his chief legal advisor Zoran Krasić from the case, by instigating disciplinary proceedings against Boris Aleksić and Dejan Mirović – in 2010 and 2011 respectively– and by refusing to grant privileged communication in

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See also *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Order on Translation of Documents", 6 March 2003 (public), pp. 2 and 3: "[...] the effective date of filing the material listed above shall be the date of filing in one of the official languages of the Tribunal, but [...] all time-limits for response laid down in the Rules shall begin to run from the date of filing of the translation in the language understood by the Accused".

[60] Submission, paras 25-29. In another section of his Submission, the Accused reiterates arguments concerning privileged communication and seeks, in this respect, additional damages in the amount of 100,000 euros (*ibid.*, paras 30 to 32).

[61] Submission, paras 30 to 31 referring notably to Article 21 (4) (b) of the Statute; Article 20 (4) (b) of the Statute of the International Criminal Tribunal for Rwanda ("ICTR"); Principle 8 of the Basic Principles on the Role of Lawyers, Doc. UN A/CONF.144/28/Rev.1, 7 September 1990; Principle 18 (2) of the Body of Principles on Detention; Rule 93 of the European Prison Rules (Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to Members States on the European Prison Rules, 11 January 2006) ("European Prison Rules"): the Chamber notes however that Rule 93 mentions that conditions of detention and not confidentiality of communication between an accused and his legal counsel, shall be monitored by an independent body; Article 14 (3) (b) of the ICCPR; Articles 8 (2) (c) and 8 (2) (d) of the ACHR; Article 67 (1) (b) of the Statute of the International Criminal Court ("ICC"), Doc. UN A/CONF.183/9, 17 July 1998, that entered into force on 1 July 2002. The Accused also refers to the case of *Kröcher and Möller v. Switzerland*, European Commission of Human Rights, No. 8463/78, decision of 9 July 1981.

[62] Submission, para. 26. *See* also Defence Closing Arguments, T(E) of 14 March 2012, p. 17338 (draft translation).

the main case between the Accused and his case manager Nemanja Šarović, appointed as his case manager in one of the contempt of court proceedings.[64]

32. The Accused bases his claim for damages notably on a decision rendered on 31 January 2007 by Trial Chamber III of the ICTR in the case of *The Prosecutor v. André Rwamakuba*, in the context of a violation noted in respect to the right to legal assistance.[65] The Accused points out that the *Rwamakuba* Decision of 31 January 2007 confirms that a Chamber of the ICTR or of this Tribunal has the power, in accordance with international customary law to grant, appropriate remedy to an accused whose rights were violated,[66] including ordering payment of damages.[67]

33. Finally, the Accused claims infringement of his right to the costs of his defence and violations of the principle of equality of arms, and seeks on this ground damages in the amount of 400,000 euros.[68] He submits that an indigent accused has the right to have the costs of his defence covered.[69] According to the Submission, the Registry did not abide by two decisions rendered by the Chamber in 2007 and 2010, ordering the Registry to finance the defence of the Accused to the extent of 50% of the sums usually allotted to cases of similar complexity, and did not proceed to pay his defence costs.[70] The Accused states furthermore that he seeks to have his defence costs paid retroactively starting from the first day of his detention, which is 24 February 2003 and not October 2010.[71] The Accused claims at the same time a

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[63] Submission, paras 26, 30 to 31.
[64] Submission, para. 26; *see* also *ibid.*, para. 56.
[65] Submission, para. 28, referring to *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, "Decision on Appropriate Remedy", 31 January 2007 (public) ("*Rwamakuba* Decision of 31 January 2007").
[66] Submission, para. 28 referring to the *Rwamakuba* Decision of 31 January 2007, paras 32 to 49.
[67] Submission, para. 28 referring to the *Rwamakuba* Decision of 31 January 2007, paras 50 to 56.
[68] Submission, paras 38 to 41. *See* also Defence Closing Arguments, T(E) of 15 March 2012, pp. 17407 to 17408 (draft version).
[69] Submission, para. 38.
[70] Submission, para. 39, referring to the Decision of 30 July 2007 and to *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, "Decision on Financing of Defence", 29 October 2010 (confidential with *ex parte* annexes from the two parties; public redacted version filed on 2 November 2010), p. 7 ("Decision of 29 October 2010"). *See* also Defence Closing Arguments, T(E) of 15 March 2012, p. 17409 (draft version).
[71] Submission, para. 39. *See* also Defence Closing Arguments, T(E) of 15 March 2012, p. 17409 (draft version).

violation of the principle of equality of arms, arguing that the Prosecution, for its part, benefits from a sizeable staff and considerable resources.[72]

2. Analysis and Conclusions of the Chamber

a) Right to Legal Assistance

34. The Chamber notes at the outset that according to established case-law, Article 21 (4) (d) of the Statute[73] "does not support the proposition that an accused who elects to self-represent is nonetheless entitled to legal aid".[74] In this respect, the Appeals Chamber has pointed out on numerous occasions the "binary opposition" between these two rights.[75] Consequently, the Appeals Chamber specified that Article 21 (4) (d) of the Statute "does not require that an accused who opts for self-representation receive all the benefits held by an accused who opts for counsel".[76] According to the Appeals Chamber, "[a]llowing an accused to self-represent and yet

[72] Submission, para. 40. *See* also Defence Closing Arguments, T(E) of 15 March 2012, pp. 17407 to 17408 (draft version).
[73] This provision stipulates the right "to defend himself in person *or* through legal assistance of his own choosing [...]" (emphasis added).
[74] *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, "Decision on Krajišnik Request and on Prosecution Motion", 11 September 2007 (public) ("*Krajišnik* Decision of 11 September 2007"), para. 40 and references quoted. *See* also *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.8, "Decision on Appeal from Order on the Trial Schedule", 19 July 2010 (public) ("*Karadžić* Decision of 19 July 2010"), para. 11.
[75] *Krajišnik* Decision of 11 September 2007, paras 40 and 41. *See* also *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A , "Decision on Momčilo Krajišnik's Motion to Reschedule Status Conference and Permit Alan Dershowitz to Appear", 28 February 2008 (public) ("*Krajišnik* Decision of 28 February 2008"), para. 8 ; *Slobodan Milošević v. The Prosecutor*, Case No. IT-02-54-AR73.7, "Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel", 1 November 2004 (public), para. 11; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, "Scheduling Order for Appeals Hearing and Decision on Hassan Ngeze's Motion of 24 January 2006", 16 November 2006 (public), p. 3.
[76] *Krajišnik* Decision of 11 September 2007, paras 40 and 41. *See* also *Karadžić* Decision of 19 July 2010, para. 11; *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR73.5, "Decision on Radovan Karadžić's Appeal of the Decision on Commencement of Trial", 13 October 2009, para. 24; *Krajišnik* Decision of 28 February 2008, paras 6 and 8 ("[...] What the Appeals Chamber has prohibited is a situation whereby defendants can mix-and-match various elements of self-representation and legal assistance – e.g., when a self-represented accused has attempted to partake of legal aid funding. A defendant must take the bitter with the sweet when making this choice [...]"); *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.6, "Decision on the Interlocutory Appeal by the *Amici Curiae* against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case", 20 January 2004 (public), para. 19 ("There is no doubt that, by choosing to conduct his own defence, the Accused deprived himself of resources a well-equipped legal defence team could have provided. A defendant who decides to represent himself relinquishes many of the benefits associated with representation by counsel [...]").

also receive full legal aid funding from the Tribunal would, as the saying goes, let him have his cake and eat it too".[77]

35. Nevertheless, this general rule does not exclude, according to the circumstances of the case, that the Tribunal agrees to acknowledge and remunerate in part the work of legal associates appointed by indigent accused, in order to give full effect to Article 21 (4) (d) of the Statute in cases of self-represented accused.[78] As explained below, it is precisely in this context that, despite his choice to defend himself[79] and in light of the particular circumstances taken into consideration by the Chamber, the Accused was allowed to benefit from partial financing by the Tribunal of costs related to assistance provided by legal associates. Consequently, the Accused cannot claim that his right to legal assistance was violated as such.[80] The Chamber will presently deal with the specific allegations raised in respect to the rights of the Accused.

i) Financing of Legal Assistance

a) Procedural Background

36. The Chamber recalls that on 31 October 2003,[81] the Accused formally requested financing of his defence and then proceeded to regularly reiterate this request during his trial.[82] In his letter dated 19 December 2006, the Registrar

[77] *Krajišnik* Decision of 11 September 2007, para. 41.
[78] *Krajišnik* Decision of 11 September 2007, para. 42. *See* also, *The 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 (public), para. 16.
[79] *See* below, paras 6 to 19.
[80] The Chamber notes furthermore that the sources of the international law quoted in the Submission in support of the arguments on the right to legal assistance do not relate to those cases where an accused opts for self-representation.
[81] *See The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R33B, "Decision on the Registry Submission Pursuant to Rule 33 (B) Regarding the Trial Chamber's Decision on Financing of Defence", 8 April 2011 (confidential; public redacted version filed on 17 May 2011)) ("Decision of 8 April 2011"), No. 4 referring to *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Submission No. 24", 31 October 2003.
[82] *See*, for example, "Decision on Financing of Accused's Defence", 23 April 2009 (public) ("Decision of 23 April 2009"), No. 3 referring to: *The Prosecutor v. Vojislav Šešelj*, Case No, IT-03-67-PT, "Submission Number 227: Request for Reimbursement of Costs for the Preparation of Defence in 2006", 22 December 2006; "Submission Number 228: Request for the Registry to Calculate the Overall Costs of Professor Vojislav Šešelj's Defence over the Four-Year Pre-Trial Period", 22 December 2006; "Submission Number 229: Request for Reimbursement of Costs for the Preparation of Defence in the Period 2003 to 2006", 22 December 2006; "Submission Number 236 : Appeal by Professor Vojislav Šešelj Against the Registrar's Letter/Decision of 19 December 2006", 22 January 2007 (public) ;

explained in detail the nature and the scope of the costs relating to the defence of the Accused that could be covered by the Tribunal, while at the same time recalling that the indigent status of the Accused had yet to be established, that he had not requested the appointment of a lawyer and that consequently, the Accused was not formally eligible for legal aid from the Tribunal.[83] In the Decisions of 4 January 2007 and 9 February 2007, the Registry denied several of the Accused's requests for reimbursement of the funds he allegedly spent for the preparation of his defence between 2003 and 2006.[84]

37. In the Decision of 30 July 2007, the Pre-Trial Judge set out the guidelines and conditions relating to the Tribunal assuming the costs of the Accused's defence in the present case.[85] In the Decision of 30 October 2007, the Chamber noted that the dispositions enacted by the Decision of 30 July 2007 could not be implemented

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"Submission Number 246 : Appeal by Professor Vojislav Šešelj Against the Decision of the Registrar of 28 December 2006", 19 February 2007 (public); "Submission No. 248: Appeal of Professor Vojislav Šešelj against the Decision of the Registrar of 9 February 2007", 2 March 2007 (public); "Submission No. 294: Professor Vojislav Šešelj's Motion for a Decision by Trial Chamber III on Financing His Defence in Accordance with the Statute", 14 June 2007 (public); "Submission Number 378: Professor Vojislav Šešelj's Motion for Payment of Defence Costs", 18 February 2008 ("Submission of 18 February 2008"). *See* Procedural Issues, T(E) of 2 March 2010, pp. 15575 to 15576 where the Accused indicated that he would need two years to prepare his defence if the latter was not financed by the Tribunal.

[83] Annex II (public) to "Registry Submission Pursuant to Rule 33 (B) Regarding the Accused's Submission No. 425", 23 September 2009 (public) ("Submission of 23 September 2009"). *See* also annex I (confidential) to "Registry Submission Pursuant to Rule 33 (B) of the Rules of Procedure and Evidence Regarding Vojislav Šešelj's Appeal Against the Registry's Decision of 19 December 2006", 9 February 2007 (public with confidential annexes).

[84] On 4 January 2007, the Registrar denied Submissions 227 to 229, on the ground that the system of legal aid in place at the Tribunal only provided for those cases in which the Accused's indigence has been demonstrated and if counsel was designated or appointed (*see The Prosecutor v. Vojislav Šešelj*, Case No, IT-03-67-PT, "Registry Submission Regarding Vojislav Šešelj's Appeals Against the Registrar's Decision of 28 December 2006 and 9 February 2007", 9 March 2007 (public with annexes) ("Submission of 9 March 2007"), paras 2 and 16). On 9 February 2007, the Registry maintained its refusal to reimburse the Accused's alleged costs for the preparation of his defence between 2003 and 2005 and denied his request for reimbursement of costs he allegedly incurred in 2006 (*see* Submission of 9 March 2007, paras 2 and 17). On 12 March 2007, the President denied the Accused's appeal against the Decision of 19 December 2006 and invited the Accused to present his arguments before the Trial Chamber seized of the case (*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Appeal Against Registry Decision of 19 December 2006", 12 March 2007 ("President's Decision of 12 March 2007") (public), para. 6). On 25 April 2007, on the same grounds, the President denied the Accused's appeal against the Decisions of 4 January 2007 and 9 February 2007 (*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Appeals Against Decisions of the Registrar of 4 January 2007 and 9 February 2007", 25 April 2007 (public), paras. 12 and 13).

[85] Decision of 30 July 2007, paras 56 to 66. The Pre-Trial Judge, seized of the Accused's Submission dated 2 July 2007, urged the Accused to provide the Registry with all useful information to assess his state of indigence and ordered "the implementation of procedures in respect of the Accused applicable to the provision of legal aid", in accordance with the Rules and the Practice Direction on the Assignment of Defence Counsel No. 1/94 (IT/73/REV.11) of 11 July 2006.

because of the Accused's refusal to comply with the formalities imposed by the Registry and to provide the required proof.[86]

38. In the Decision of 4 March 2008, the Registry reiterated that it would not authorise the financing of the Accused's defence until he fulfilled the conditions set forth in the Decision of 30 July 2007.[87] During the hearing of 11 March 2008, the Accused referred to the Registry Decision of 4 March 2008 and stated that he would henceforth not insist on this issue.[88]

39. In the Decision of 23 April 2009, the Chamber once again denied the Accused's request for reimbursement of his defence costs[89] and invited the Acccused to provide the Registry with all useful information to assess his state of indigence.[90]

40. In the Decision of 5 July 2010, the Registry denied another request by the Accused to fund his defence since 31 October 2003 on the ground that the Accused had not provided all the information required to assess his financial situation.[91]

41. In the Decision of 29 October 2010, the Chamber ordered the Registrar, "from this day forward until the end of the trial, to fund 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, based on the

[86] *The Prosecutor v. Vojislav Šešelj*, Case No, IT-03-67-PT, "Decision on Implementing the Financing of the Accused", 30 October 2007 (public), pp. 1 to 2. The Chamber invited the Accused once again to provide the documents requested by the Registry so that it may determine his state of indigence. The issue was raised once again during the hearing of 13 February 2008, when the Chamber suggested that the Accused submit a new request with the Registry (Procedural Issues, T(E) of 13 February 2008, p. 3503).

[87] Decision of 23 April 2009, para. 9 referring to "Decision", 4 March 2008 ("Registry Decision of 4 March 2008"), p. 2. In his Submission of 18 February 2008 which is the subject of the said Registry Decision, the Accused requested that the Registry reimburse his defence costs and argued that the Registry was required to reimburse all the costs incurred during the pre-trial stage of the case and to pay the costs of his defence during the trial. The Accused requested furthermore the Registry to disclose the defence costs in all other cases that were financed by the Tribunal, including the costs incurred by the appointment of stand-by counsel previously ordered in his case (Submission of 18 February 2008, pp. 3 and 4). The Registry deemed in this regard that the Accused could not receive retroactive payments as they were not authorised by the Decision of 30 July 2007 and were not forseen or allowed by the rules in force at the Tribunal (*see* Decision of 23 April 2009, para. 9 referring to the Registry Decision of 4 March 2008, p. 2).

[88] Procedural Issues, T(E) of 11 March 2008, pp. 4705 to 4708.

[89] *The Prosecutor v. Vojislav Šešelj*, Case No, IT-03-67-PT, "Submission Number 411: Request for the Trial Chamber to Secure the Financing of Professor Vojislav Šešelj's Defence", 3 February 2009 (public).

[90] Decision of 23 April 2009, para. 27.

Scheme for Persons Assisting Indigent Self-Represented Accused and on the basis of a determination of the complexity of this case at Level 3, unless other information [was] provided".[92]

42. During the hearing of 5 May 2011,[93] the Accused filed an oral motion for retroactive reimbursement of his defence costs since his arrival at the Tribunal in February 2003 and argued that in its Decision of 29 October 2010, the Chamber had not decided on the issue of retroactive reimbursement of his defence costs for the previous eight years. He pointed out furthermore that unless the Chamber granted his request, he would not present a defence case.[94] In the Decision of 9 June 2011, the Chamber recalled that when it ordered in its Decision of 29 October 2010 that the taking over of the financing of the Defence enter into effect as of 29 October 2010, it was implied that this financing was not to be retroactive and did not apply from 31 October 2003 but from 29 October 2010.[95] The Chamber noted furthermore that financing of the Defence was not ordered on the ground that the Accused was indigent, but to safeguard the rights of the Defence and to prevent the trial from being paralysed.[96] The Chamber also noted that the Accused did not lodge an appeal to the Decision of 29 October 2010.[97] The Chamber considered, on the one hand, that the oral submission of the Accused could only be analysed as a request for reconsideration of the Decision of 29 October 2010 and, on the other, taking into account the applicable law in matters of reconsideration of a decision,[98] denied the oral submission of the Accused, finding that the Accused did not argue or establish that the reasoning of the Decision of 29 October 2010 contained a clear error or that

[91] "Decision", 5 July 2010 (confidential and *ex parte* from the Prosecution; public redacted version filed on 6 July 2010).
[92] Decision of 29 October 2010, p. 7. Following an appeal lodged by the Registry on 19 November 2010 ("Registry Submission Pursuant to Rule 33 (B) Following the Trial Chamber's Decision on Financing of Defence Dated 29 October 2010", 19 November 2010 (public with public, confidential and *ex parte* annexes)), the Decision of 29 October 2010 was upheld by the Appeals Chamber (*see* Decision of 8 April 2011).
[93] Procedural Issues, T(E) of 5 May 2011, pp. 16991 to 17000.
[94] Procedural Issues, T(E) of 5 May 2011, pp. 16991 to 16994.
[95] "Consolidated Decision Regarding Oral Motions by the Accused Concerning the Presentation of his Defence", 9 June 2011 (public redacted version) ("Decision of 9 June 2011"), para. 44.
[96] Decision of 9 June 2011, para. 44; Decision of 29 October 2010, para. 26.
[97] Decision of 9 June 2011, para. 45.
[98] Decision of 9 June 2011, para. 13: "A Trial Chamber enjoys inherent power to reconsider its own decisions and may entertain a request for reconsideration if the requesting party establishes for the Chamber that the reasoning of the impugned decision contains a clear error or that particular

particular circumstances, which may be new facts or arguments, justified reconsideration in order to avoid injustice.[99]

43. Finally, the Chamber notes furthermore that the above-mentioned decisions governing the scheme of remuneration for legal assistance in the present case, the "Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused", produced notably on the basis of the *Krajišnik* Decision of 11 September 2007 and of the decision rendered by the Tribunal President in the *Karadžić* case,[100] entered into force on 1 April 2010 ("Remuneration Scheme"). This document stipulates not only the modalities of financing the defence for indigent self-represented accused but also the remedies available for a complaint or dispute and is, therefore, directly applicable to the situation of the Accused.

b) Conclusions of the Chamber

44. In this context, the Chamber deems that, with respect to the request for retroactive financing of his defence, the present Submission constitutes a new request for reconsideration of the Decision of 9 June 2011.[101] Nevertheless, the Chamber notes that the arguments of the Accused still do not meet the above-mentioned criteria required for a decision to be reconsidered. With respect to the partial funding ordered by the Chamber, the Chamber notes that based on the written submission filed on 14 June 2011, the Registry indicated to the Chamber that the Accused had not yet provided it with the information necessary for this funding.[102]

45. The Chamber deems, therefore, that it cannot find any violations related to the partial financing of the Accused's defence. The delay in the authorised payments is solely attributed to the Accused, who persists in continuously refusing to adhere to the formal requirements of the financing system.

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circumstances, which may be new facts or arguments, justify reconsideration in order to avoid injustice".

[99] Decision of 9 June 2011, paras 46 to 47, 74.

[100] *The Prosecutor v. Radovan Karadzić*, Case No. IT-95-5/18-T, "Decision on Request for Review of OLAD Decision on Trial Phase Remuneration", 19 February 2010 (public).

[101] The Chamber recalls on this point that it has already indicated to the parties that it must ensure the expedition of the trial and that the complexity and scope of this case necessitate that requests for reconsideration be the exception and not the rule ("Decision on Prosecution's Motion for Partial Reconsideration of Decision of 10 December 2010 on Milan Babić", 4 March 2011 (public)).

[102] "Registry Submission Pursuant to Rule 33(B) Regarding Implementation of Decision on Financing of the Defence", 14 June 2011 (public).

ii) Privileged Associates

46. *In limine*, the Chamber recalls that in principle, the rule that follows from Article 21 (4) (b) of the Statute and Rule 97 of the Rules, pursuant to which all communication between lawyer and client is considered as privileged, is not applicable when an accused chooses to defend himself.[103] Consequently, the Accused's allegation that his right to legal assistance as such has been violated is unfounded. The Chamber notes, nevertheless, that the Appeals chamber has considered, on an individual basis, that the Registry may, in the exercise of its discretionary power, allow a self-represented accused to have privileged access to up to three of his designated associates.[104] These "privileged" associates must abide by the dispositions of the Code of Conduct.[105] Consequently, they have access to confidential case information and to the courtroom, and enjoy privileged communication with the accused, including in the United Nations Detention Unit at The Hague ("Detention Unit").[106]

47. As the Accused has benefited from such authorisation,[107] the Chamber will analyse his specific allegations concerning his designated associates who have the status of "privileged associates" pursuant to the confidentiality agreements signed with the Registry.

a. Zoran Krasić

48. On 21 December 2006, Zoran Krasić signed a confidentiality agreement with the Registry and became one of the Accused's privileged associates.[108] On 28 November 2008, the Registry notified the Accused that Zoran Krasić's privileged

[103] *Krajišnik* Decision of 11 September 2007, para. 33.
[104] *Krajišnik* Decision of 11 September 2007, No. 93. The Appeals Chamber furthermore considered that unlimited access to designated legal associates by a self-represented accused provides him with "adequate time and facilities for the preparation of his defence", a right guaranteed to him under Article 21 (4) (b) of the Statute" (*ibid.*, para. 35). *See* also, Remuneration Scheme, para. 20 (f).
[105] Code of Professional Conduct for Counsel Appearing before the Tribunal, 6 August 2009 (IT/125 REV.3) ("Code of Conduct").
[106] *See* also Remuneration Scheme, paras 20 (f), 23 and 27.
[107] *See* "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", 1 December 2008 (public), para. 26.
[108] *See* "Decision on the Accused's Oral Request to Reinstate Messrs. Zoran Krasić and Slavko Jerković as Privileged Associates", 10 February 2010 (public) ("Decision of 10 February 2010 on Privileged Associates"), No. 2 referring to "Undertaking by Mr Z. Krasić", 21 December 2006.

status was being revoked on account of allegations of witness intimidation, allegations of having disclosed confidential information to a third party and his public statements aimed at discrediting the Tribunal.[109] On 1 September 2009, the Accused requested once again for Zoran Krasić to be designated as his privileged associate.[110] This was refused by the Registry on 10 September 2009 on the ground that the reasons for revoking his status as privileged associate, set out in the Registry Decision of 28 November 2008, were still valid.[111]

49. On 15 September 2009, the Accused lodged an appeal before the President against the Registry Decision of 10 September 2009.[112] On 21 October 2009, the President denied the Accused's appeal on the ground that the Registrar had not acted unreasonably in the Registry Decision of 28 November 2008 and *a fortiori* in the Registry Decision of 10 September 2009, regarding the revocation of communication between the Accused and Zoran Krasić.[113] On 12 January 2010, the Accused turned to the Chamber asking that it grant his request to have Zoran Krasić reinstated as his privileged associate.[114]

50. In the Decision of 10 February 2010 on privileged associates, the Chamber noted that it did not have authority to challenge the reasons set out by the Registry on which it based its decisions to revoke Zoran Krasić's privileged associate status and also noted that these reasons, upheld by the President's Decision of 21 October 2009, still existed at the time of the decision.[115] The Chamber decided furthermore to allow Zoran Krasić to assist the Accused in open sessions during his defence case – should that presentation take place – and invited the Registry to reimburse his travel expenses in order to assist the Accused during this stage.[116]

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[109] *See* Decision of 10 February 2010 on Privileged Associates, No. 3 referring to "Letter from the Registrar to Vojislav Šešelj", 28 November 2008 ("Registry Decision of 28 November 2008").
[110] *See* Decision of 10 February 2010 on Privileged Associates, No. 4 referring to "Submission 423", 1 September 2009.
[111] "Letter from the Registrar to Vojislav Šešelj", 10 September 2009 (public) ("Registry Decision of 10 September 2009"), in Annex I to the Submission of 23 September 2009.
[112] "Submission No. 425", 15 September 2009 (public).
[113] "Decision on Vojislav Šešelj's Request for Review of Registrar's Decision of 10 September 2009", 21 October 2009 (public) ("President's Decision of 21 October 2009").
[114] Procedural Issues, T(E) of 12 January 2010, p. 14829 (closed session).
[115] Decision of 10 February 2010 on Privileged Associates, para. 14.
[116] Decision of 10 February 2010 on Privileged Associates, p. 5.

51. During the hearing of 5 May 2011, the Accused seized the Chamber of several oral requests, including a request to regulate the status of his associate Zoran Krasić.[117] In the Decision of 9 June 2011, the Chamber deemed that the said request must be interpreted as a request for reconsideration of the Decision of 10 February 2010 on privileged associates, but that the Accused had neither argued nor established that the reasoning in the Decision contained a clear error or that particular circumstances justified its reconsideration in order to avoid an injustice.[118]

52. The Chamber deems that the arguments put forth in the Submission concerning the status of Zoran Krasić were merely reiterating arguments that were already considered and rejected by the Registry, the President and the Chamber as recalled above. Consequently, these arguments could not be accepted.

b. Boris Aleksić

53. Pursuant to the request of the Accused, Boris Aleksić became his privileged associate in the main trial, replacing Aleksandar Vucić on 24 September 2008, the date on which he signed a confidentiality agreement with the Registry.[119] During the hearing of 5 May 2011, the Accused informed the Chamber that the Registry had instigated disciplinary proceedings against Boris Aleksić.[120] In the Decision of 9 June 2011, the Chamber indicated that competence for hearing disciplinary proceedings fell expressly and exclusively to the Disciplinary Panel (first instance) or to the Disciplinary Board (in appeal) based on the Code of Conduct.[121] Although the Chamber's competence did not allow consideration of whether the disciplinary

[117] Procedural Issues, T(E) of 5 May 2011, pp. 16991 to 17000.
[118] Decision of 9 June 2011, paras 14 to 165.
[119] *See* "Registry Submission Pursuant to Rule 33(B) Regarding the Trial Chamber's Decision on Monitoring of Vojislav Šešelj's Communications", 1 December 2008 (public), para. 9.
[120] Procedural Issues, T(E) of 5 May 2011, p. 16991. The Chamber notes that the Disciplinary Panel rejected the Registrar's complaint against Boris Aleksić for a violation of Article 35 (iii) and (iv) of the Code of Professional Conduct and/or Rule 44 (A) (vi) of the Rules (In the Matter of Mr Boris Aleksić, Case No. DP-2-11, "Decision by Disciplinary Panel", 9 May 2011 (confidential) ("Decision of the Disciplinary Panel of 9 May 2011")). It notes also that this decision was upheld on appeal (In the Matter of Mr Boris Aleksić, Case No. DP-2-11 and IT-03-67-T, "Decision on the Appeal by the Registrar to the Disciplinary Board", 19 December 2011 (confidential and *ex parte*); *see* also "Corrigendum to Disciplinary Board Decision of 16 December 2011", 12 January 2012 (confidential and *ex parte*) ("Corrigendum")). In the Decision of 17 February 2012, the Disciplinary Board ordered that the confidential and *ex parte* status be lifted from the Decision of the Disciplinary Panel of 9 May 2011 and from the Corrigendum (In the Matter of Mr Boris Aleksić, Case No. DP-2-11 and IT-03-67-T, "Decision on Lifting Confidentiality", 17 February 2012 (public)).
[121] Decision of 9 June 2011, para. 24.

proceedings instigated against Boris Aleksić had the effect of infringing on the Accused's right to a fair trial, the Chamber deemed that the existence of disciplinary proceedings against members of a defence team did not violate the right of an accused to a fair trial.[122] On the contrary, the Chamber considered that the purpose of such proceedings was to ensure that the conduct of the defence teams remained above reproach, chiefly, in the interest of the accused they are intended to assist.[123]

54. The Chamber reiterates that, in the present Submission, the Accused failed to demonstrate that the Decision of 9 June 2011 should be reconsidered. Consequently, his argument that disciplinary proceedings against Boris Aleksić violated his defence rights is rejected.

c. Dejan Mirović

55. In a letter sent to the Accused on 23 February 2011, the Registry agreed, at the request of the Accused, to recognise Dejan Mirović as his privileged associate in the main case ("Decision of 23 February 2011").[124] During the hearing of 23 August 2011, the Accused informed the Chamber that the Registry had instigated disciplinary proceedings against Dejan Mirović.[125] Nevertheless, the Chamber does not have any information available regarding disciplinary proceedings against Dejan Mirović.

d. Nemanja Šarović

56. In its Decision of 23 February 2011, the Registry denied the Accused's request to recognise Nemanja Šarović as the case manager in the main case.[126] In a letter sent to the Accused on 17 March 2011, the Registry recalled that Nemanja Šarović was the case manager solely for the contempt case and not for the main case ("Decision of 17

[122] Decision of 9 June 2011, para. 25.
[123] Decision of 9 June 2011, para. 25.
[124] *See* "Decision on Request for Review of Registry Decision Regarding Visit of Defence Team Members", 10 August 2011 (public redacted version) ("President's Decision of 10 August 2011"), No. 23 referring to Annex V to "Registry Submission Pursuant to Rule 33(B) Regarding Vojislav's Šešelj's Submission 469 Dated 23 March 2011", 26 April 2011 (confidential with confidential and *ex parte* annexes) ("Registry Submission of 26 April 2011"). The Chamber notes that Dejan Mirović is also the Accused's legal advisor in the contempt of court proceedings.
[125] Administrative Hearing, T(E) of 23 August 2011, p. 17031.
[126] *See* President's Decision of 10 August 2011, No. 24.

March 2011").[127] The Accused lodged an appeal before the President against the Decisions of 23 February and 17 March 2011.[128]

57. In his Decision of 10 August 2011, the President deemed that the brief submission filed by the Accused did not establish that it was unreasonable on the part of the Registrar to limit Nemanja Šarović's access to privileged communication in the main case.[129] The President also noted that the Accused retained the right to have privileged communication with Dejan Mirović, his privileged associate in the contempt proceedings.[130] The President noted finally that the Accused was still in a position to meet with Nemanja Šarović in another setting and was therefore able to instruct Nemanja Šarović or to do so through Dejan Mirović.[131]

58. The Chamber notes that the Accused has therefore exhausted all available remedies against the Decisions of 23 February and 17 March 2011. In order to seize the Chamber of a request for reconsideration of the President's Decision of 10 August 2011, the Accused must show that the said decision violates his right to a fair trial.[132] The relevant portion of the present Submission is merely reiterating unsubstantiated arguments that were already considered and rejected by the President. Consequently, the Chamber rejects the Accused's argument whereby the refusal to extend the system

[127] *See* President's Decision of 10 August 2011, No. 30 referring to Annex VI to Registry Submission of 26 April 2011. The Chamber notes that Nemanja Šarović is the case manager in the case of *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, in which Trial Chamber II found the Accused guilty of contempt of court and sentenced him to 18 months in prison (*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Judgement of 31 October 2011), for which appeals proceedings are underway, and the case of *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4, for which first instance proceedings are underway.

[128] *See* President's Decision of 10 August 2011, No. 1.

[129] President's Decision of 10 August 2011, para. 23.

[130] President's Decision of 10 August 2011, para. 24.

[131] President's Decision of 10 August 2011, para. 24.

[132] *See*, for example, *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T (Appeals Chamber Decision), "Decision on the Registry's Submission Pursuant to Rule 33 (B) Following the President's Decision of 17 December 2008", 9 April 2009 (public) ("Decision of 9 April 2009"), para. 15 quoting *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, "Decision on 'Motion Seeking Review of the Decisions of the Registry in Relation to Assignment of Counsel'", 29 January 2007 (public), p. 3. *See* also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, "Decision on Jean-Bosco Barayagwiza's Urgent Motion Requesting Privileged Access to the Appellant Without Attendance of Lead Counsel", 17 August 2006 (public), p. 3; *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, "Decision on Hassan Ngeze's Motion to Set Aside President Møse's Decision and Request to Consummate his Marriage", 6 December 2005, p. 4 ("[...] Chamber has the statutory duty to ensure the fairness of the proceedings [...] and, thus, has jurisdiction to review decisions of the Tribunal's Registrar and President [...] [H]owever, [...] the exercise of such jurisdiction should be closely related to the fairness of proceedings [...] and should not be used as a

of privileged communication to include communication with Nemanja Šarović in the main case allegedly violated his right to legal assistance. The Chamber notes furthermore that another complaint regarding this issue was rejected by the President on the ground that it was filed by Dejan Mirović who was not in a position to present arguments on behalf of the Accused who is defending himself.[133]

e. Recent Interruption of Privileged Communication with the Accused's Associates

59. In a letter dated 29 September 2008, the Registrar informed the Accused of his decision to monitor his privileged communication for a renewable period of 30 days, pursuant to Rule 65 (B) of the Rules on Detention[134] ("Registrar's Decision of 29 September 2008").[135] This measure was renewed several times on the ground that there was no substantial change in the circumstances underlying the Registry Decision of 29 September 2008 "at least until the various submissions pending before the Trial Chamber are addressed".[136]

60. On 27 November 2008, the Chamber decided, by a majority, that it had jurisdiction to review whether the decision to monitor the privileged communication of the Accused had the effect of infringing on the Accused's right to a fair trial and deemed that the fact that this jurisdiction is not expressly provided for in Rule 65 (B) of the Rules of Detention does not remove the Chamber's inherent jurisdiction

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substitute for a general power of review which has not been expressly provided by the Rules on Detention")

[133] "Decision on Further Notifications to the President Submitted by the Legal Advisor to Vojislav Šešelj", 21 March 2012 (public).

[134] Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal, 7 October 2005, IT/38REV.9 ("Rules on Detention").

[135] *See* "Registry Submission Pursuant to Rule 33(B) Regarding the Monitoring of Vojislav Šešelj's Communications", 4 November 2008 (public with confidential and *ex parte* annex) ("Registry Submission of 4 November 2008"), Annex 1. The Accused seized the Chamber of an oral request on 9 October 2008, arguing that this measure violates his right to a defence (Procedural Issues, T(E) of 9 October 2008, p. 10584).

[136] *See* Registry Submission of 4 November 2008, para. 41. The Accused seized the Chamber of an oral request on 4 November 2008, in reference to one of its decisions renewing application of the Decision of 29 September 2008 (Procedural Issues, T(E) of 4 November 2008, pp. 11307 to 11312). *See* also "Registry Submission Pursuant to Rule 33(B) on the Accused's Request for Review of Decision to Monitor his Privileged Communications", 1 December 2011 (confidential; public redacted version filed on the same date) ("Registry Submission of 1 December 2011"), para. 4; "Further Registry Submission Pursuant to Rule 33(B) on the Accused's Request for Review of Decision to Monitor his Privileged Communications", 5 December 2011 (public with confidential annex).

pursuant to the Statute.[137] On 9 April 2009, the Appeals Chamber set aside the Decision of 27 November 2008 on the grounds that: "(1) Rule 65 (B) of the Rules of Detention is clear in vesting the President with the power to reverse any decision on the monitoring of communication between a detainee and his counsel made by the Registry under this Rule, and (2) in administrative matters, a Trial Chamber may only step in under its inherent power to ensure that proceedings are fair once all available remedies have been exhausted."[138]

61. In a letter of 12 October 2011, the Registry informed the Accused that there were reasons to believe that the facilities granted to the Accused for communication with his legal associates for the purpose of preparing his defence were utilised as a means to facilitate the disclosure of confidential information and invited the Accused to comment on this issue ("Letter of 12 October 2011").[139]

62. On 19 October 2011, the Accused submitted a submission, filed on 1 November 2011, objecting to the contents of the Letter of 12 October 2011.[140] On 10 November 2011, the Chamber decided that in this case, the Accused had not exhausted all the means of recourse envisaged in the Rules of Detention and that it did not have jurisdiction, at this stage, to assess whether a Registry decision to monitor his privileged communication was liable to infringe on the Accused's right to a fair trial.[141]

63. On 16 November 2011, the Accused seized the President of a request to annul one of the decisions renewing the monitoring of his privileged communication rendered on 28 October 2011.[142] On 14 December 2011, the President dismissed this motion on the ground that the Registry acted within the scope of its discretion and that

[137] "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'", 1 December 2008 (public) ("Decision of 27 November 2008"), paras 20 and 21.
[138] Decision of 9 April 2009 (public), paras 19 and 20.
[139] Registry Submission of 1 December 2011, para. 2. *See* also Administrative Hearing of 7 February 2012 T(E), p. 17090.
[140] "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", 1 November 2011 (public), para. 2.
[141] "Decision on Accused's Submission 479 on the Monitoring of his Privileged Communications", 10 November 2011 (public), p. 2.
[142] "Submission Number 481", 16 November 2011 (public). *See* also Administrative Hearing, T(E) of 7 February 2012, p. 17087.

none of the arguments raised by the Accused established that the impugned decision was unreasonable.[143]

64. On 27 January 2012, the Registry informed the Accused that in light of the advanced stage in the proceedings and, in particular, of the decision rendered by the Chamber on 25 January 2012, it was suspending the restriction measures on the privileged communication between the Accused and his associates.[144]

65. The Chamber notes that privileged communication between the Accused and his associates was restored by the Registry and that, consequently, allegations of continuous violations are null and void. With respect to the complaints regarding the above interruptions, the Chamber notes that the Accused has exercised and exhausted all means of recourse available to him under the Rules of Detention.[145] The fact that the Accused did not obtain a ruling in his favour at the time does not in itself mean that his rights were violated but shows – on the contrary – that the Accused failed to present convincing arguments showing that the Registry's decisions to suspend his privileged communication with his associates infringed upon his right to a fair trial. In light of the foregoing,[146] the Chamber is not convinced by the arguments raised by the Accused in his Submission and rejects them.

F. Alleged Restriction of the Accused's Contacts with the Outside World

1. Arguments of the Accused

66. The Accused submits that the Tribunal restricted his contacts with the outside world, notably with his family and friends, and requests on this ground damages in the amount of 200,000 euros.[147] The Accused argues that detainees are guaranteed the right to contact with the outside world and to contact with their families, lawyers,

[143] "Decision on Vojislav Šešelj's Request for Review of Decision to Monitor his Privileged Communications", 14 December 2011 (confidential), paras 12 and 13.
[144] "Registry Submission Pursuant to Rule 33(B) Regarding Monitoring of the Accused Privileged Communications", 26 January 2012, confidential and *ex parte* from the two parties, referring to the "Decision on Prosecution Request for Certification to Appeal Decision of 22 December 2011", 25 January 2012 (public with public annexes – Separate Opinion from Presiding Judge Jean-Claude Antonetti, and Separate Opinion from Judge Flavia Lattanzi – and confidential and *ex parte* annex from the Accused (sensitive filing)). *See* also Administrative Hearing, T(E) of 7 February 2012, p. 17087.
[145] *Cf. Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52A-R, "Decision on Hassan Ngeze's Motions of 15 April 2008 and 2 May 2008", 15 May 2008, pp. 3 to 4.
[146] *See* also, *supra*, para. 46.

doctors, judicial authorities, consular representatives and international organisations.[148] According to the Accused, long detention without communication with the outside world is a form of torture or cruel, inhuman or degrading treatment.[149] The Accused adds that although international standards do not explicitly prohibit incommunicado detention, it is, however, allowed only under exceptional circumstances and for a short period of time.[150] Finally, according to the Accused, depriving a detainee of communication with the outside world may also be considered as a punishment for the family of the detainee.[151]

67. In support of his argument, the Accused claims that during his nine years of detention, he received fewer visits than any other detainee of the Tribunal;[152] that he did not receive any visits during the first seven months of his detention; that in the Decision of 30 September 2003, Trial Chamber II refused to allow him a visit from Bishop Filaret of Mileševo; that the Registry refused to allow numerous visits to the Accused,[153] including a visit from his wife in July 2006 – as she was required beforehand to sign a statement undertaking not to disclose any information about the health of the Accused[154] – and one from Dragan Todorović, Milorad Mirčić and Vrejica Radeta foreseen for the period between 3 to 6 January 2012.[155]

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[147] Submission, paras 33 to 37.
[148] Submission, paras 33 to 36 referring notably to Principle 19 of the Body of Principles on Detention.
[149] Submission, paras 35 to 36 referring notably to: Resolution 38 (1997) United Nations Commission on Human Rights, Doc UN E/CN.4/1997/38, 11 April 1997; Inter-American Court of Human Rights, *Suárez Rosero v. Ecuador. Fond.* Judgement of 12 November 1997, Series C No. 35; Human Rights Committee, *Mukong v. Cameroon*, Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, 21 July 1994 ; Inter-American Commission on Human Rights, "Ten Years of Activities, 1971-1981", 1982, p. 318; Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Bolivia, OEA/Ser.L/V/II.53, doc. 6 rev. 2, 1981, pp. 41 to 42.
[150] Submission, para. 35. The Accused refers, amongst others, to the following texts: United Nations Commission on Human Rights, Report from the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment, Doc. UN E/CN.4/1995/434, Human Rights Committee, Preliminary Observations (Peru), Doc. UN CCPR/C/79/Add. 67, 25 July 1996, paras 18 and 24.
[151] Submission, para. 36. The Accused refers, amongst others, to the following texts Inter-American Commission on Human Rights, Annual Report, 1982-1983 (OEA/Ser. L/V/II/61, doc. 22, rev. 1); Inter-American Commission on Human Rights, Annual Report, 1983-1984 (OEA/Ser. L/V/II/63, doc. 22).
[152] Submission, para. 36. The Chamber notes that the Submission does not specify whether the Accused received fewer visits than another detainee charged by the Tribunal or another detainee in general.
[153] *See* also Defence Closing Arguments, 20 March 2012, *T.* 17468 to 17476 (draft version).
[154] *See* also Defence Closing Arguments, T(E) of 14 March 2012, p. 17338 (draft version): the Accused mentions the "normalisation" of visits from his wife as of December 2006.
[155] Submission, para. 36.

2. Analysis and Conclusions of the Chamber

68. The questions relating to communication and visits of detainees are regulated, in particular, by Rules 58 to 64 *bis* of the Rules on Detention. More specifically, according to the provisions of Rule 61 of the Rules on Detention:

> (A) Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rules 64 and 64bis and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may impose. Such restrictions and supervision must be necessary in the interests of the administration of justice or the security and good order of the host prison and the Detention Unit.
>
> (B) The Registrar shall refuse to allow a person to visit a detainee if he has reason to believe that the purpose of the visit is to obtain information which may be subsequently reported in the media. [...]
>
> (C) All visitors must comply with the separate requirements of the visiting regime of the host prison. [...]
>
> (D) Any person, including defence counsel for a detainee or a diplomatic or consular representative accredited to the Host State, who refuses to comply with such requirements, whether of the Detention Unit or of the host prison, may be refused access.
>
> [...]

69. The Chamber notes that the Submission of the Accused does not provide any evidence to substantiate the allegations of restrictions that were imposed on him in this respect. After examining the Submission and the evidence presented the Chamber can also not be certain on this point that the Accused has exhausted all the other routes available to him.[156] The Chamber cannot therefore but find that no violation has occurred on the grounds alleged by the Accused.

[156] *See*, in particular, Rules 80 to 84 of the Rules on Detention. Moreover, the Chamber recalls that even if the Accused had exhausted these recourses, it would only be competent to deal with the allegations if the Accused had succeeded in showing that the alleged violations in question prejudiced his right to a fair trial (*see supra*, para. 58 and note 125).

G. Alleged Violations in Relation to the Right of Access to Medical Staff

1. Arguments of the Accused

70. The Accused emphasises that detained persons have the right to medical examinations and, if necessary, to fast and efficient access to medical care, equivalent to that offered to persons who are not incarcerated.[157] According to the Submission, the Accused had been experiencing cardiac problems since December 2011 and was hospitalised on Friday, 6 January 2012, having found on the previous day, among his usual medication, a pill that was not prescribed by the doctor, who said that he did not know from where this pill had come.[158] According to the Submission, the Tribunal has therefore put the Accused's life in danger.[159] Moreover, the Accused alleges that he was not able to have direct contact with his family between 6 and 9 January 2012.[160]

71. Simultaneously, the Accused objects to the type of medical treatment that has been prescribed to him: according to the Submission, a doctor appointed by the Tribunal indicated as early as October 2009[161] that several of the prescribed medications could cause cardiac problems and, therefore, the death of the Accused.[162] Moreover, the Accused emphasises that the medical treatment was delayed, in the sense that (i) the Registry and the relevant services had not complied with the Chamber's Order of 30 July 2010[163] - ordering a medical evaluation of the Accused – until October 2010, the Accused having been hospitalised in the meantime,[164] and (ii) the Registry and the relevant services did not comply with the Order of 19 October

[157] Submission, paras 42 to 43, 50 relating in particular to the following texts: Principle 24, "Body of Principles on Detention"; Rule 29, European Prison Rules; Human Rights Council, General Comment no. 20, Doc. NU HRI/GEN/1/Rev.1 (1994), para. 11.
[158] Submission, para. 45.
[159] Submission, paras 45 and 52.
[160] Submission, para. 45. The Submission specifies that the Registry had briefly informed the wife of the Accused by phone that he had been hospitalised, without providing any details. The Submission also specifies that, contrary to what the Tribunal has claimed, the Accused had never sent a message to his wife asking her not to visit him on 10 January 2012.
[161] Submission, para. 46: The Submission refers to a medical report by Dr Zdravko Mijailović dated 16 October 2009.
[162] Submission, para. 46.
[163] The Chamber concludes from the Submission that the Accused is referring to "Order to Conduct Expert Medical Evaluation of Vojislav Šešelj" 30 July 2010 (confidential) ("Order of 30 July 2010").
[164] Submission, para. 48.

2010[165] - ordering a new medical evaluation of the Accused – until March 2011.[166] Moreover, according to the Submission, the Registry erroneously indicated that the Accused had refused to be examined by a Western expert and that the Registry had not allowed the Accused to be examined by a panel of Russian medical experts.[167]

72. Finally, the Accused argues that only those who cooperate with the Prosecution benefit from proper medical treatment.[168]

2. Analysis

73. The reminder of the procedural background below in respect of the arguments of the Accused, according to the Chamber, is sufficient to show that the arguments presented by the Accused are unfounded.

a) First Medical Evaluation

74. In the Order of 30 July 2010, having found that during the two previous months the Accused appeared very tired and was experiencing difficulties linked to his health which seemed to have deteriorated, the Chamber deemed it necessary to subject him to a medical evaluation and ordered the Registry to submit a consolidated expert report within two months or several expert evaluation reports by specialists qualified in the various illnesses of the Accused.[169] Three expert reports were filed as confidential and *ex parte* documents on 3 September 2010, 10 September 2010 and 30 September 2010, respectively.[170]

[165] The Chamber concludes from the Submission that the Accused is referring to "Order to Conduct a Fresh Expert Medical Evaluation of Vojislav Šešelj", 19 October 2010 (public) ("Order of 19 October 2010").
[166] Submission, para. 48.
[167] Submission, para. 49.
[168] Submission, paras 51 to 52.
[169] Order of 30 July 2010, p. 1.
[170] *See* "First Registry Submission Pursuant to Rule 33 (B) Regarding the Order to Conduct Expert Medical Evaluation:, 3 September 2010 (confidential and *ex parte*); "Second Registry Submission Pursuant to Rule 33 (B) Regarding the Order to Conduct Expert Medical Evaluation", 10 September

b) Second Medical Evaluation

75. In the Order of 19 October 2010, noting that the said reports showed that the health of the Accused, whose life did not seem in danger, was fairly encouraging, the Chamber nevertheless deemed it necessary to obtain additional information, in particular on the origin of the cardiac problems from which the Accused suffered and ordered the Registry to appoint a panel of three medical experts who would examine the Accused and submit a report within two months, by 19 December 2010 at the latest.[171]

76. On 18 November 2010, the Chamber ordered that the deadline for the filing of the report by the panel of experts set in the Order of 19 October 2010 be amended and postponed until 15 January 2011, in particular on the grounds that the Chamber had been informed by the Registry that the methods of appointing the panel of international experts would cause additional delays to those originally envisaged by the Order of 19 October 2010.[172] On 12 January 2011, the Chamber ordered the deadline for the filing of the report by the panel of experts set in the Order of 18 November 2010 to be once more postponed to 15 February 2011.[173]

77. On 10 February 2011, the Registry informed the Chamber in an internal memorandum addressed to the Chamber as a confidential document, that the panel of experts had finally been appointed, that the Accused was informed of their names and that the next medical evaluations would incur another delay in addition to those envisaged by the Order of 12 January 2011. Considering that the panel of experts was essentially unable to fulfil its task within the deadline set in the Order of 12 January 2011, the Chamber ordered on 17 February 2011 that the report by the panel of experts be filed within 30 days of the last medical examination of the Accused.[174]

2010 (confidential and *ex parte*); "Third Registry Submission Pursuant to Rule 33 (B) Regarding the Order to Conduct Expert Medical Evaluation", 30 September 2010 (confidential and *ex parte*).
[171] Order of 19 October 2010, p. 2.
[172] "Order Amending the Order to Conduct a Fresh Expert Medical Evaluation of Vojislav Šešelj, Filed on 19 October 2010", 18 November 2010 (public) ("Order of 18 November 2010"), p. 2.
[173] "Order Amending the Order Filed on 18 November 2010", 12 January 2011 (public) ("Order of 12 January 2011"), p. 1.
[174] "Order Amending the Order Filed on 12 January 2011", 17 February 2011 (public).

78. On 16 March 2011, the Registry informed the Chamber that the list of medical experts was presented to the Accused on 3 February 2011 and that the examinations were due to take place in February and March 2011.[175] Moreover, the Registry indicated to the Chamber that the Accused had refused to be examined by the cardiologist because of his nationality.[176]

79. On 5 July 2011, the Registry filed, as a partly confidential document, the medical report of the panel of experts, which was dated 15 June 2011.[177] According to this report, the prognosis for the Accused was more favourable and his health allowed him to attend hearings, on condition that he followed the medical treatment set out in detail in the report.[178]

c) Third Evaluation

80. Following the hospitalisation of the Accused on 6 January 2012 and his refusal to disclose to the Chamber information regarding his health, on 12 January 2012 the Chamber ordered the Registrar *proprio motu*: (i) to obtain a report from the Commanding Officer of the Detention Unit on the circumstances under which the Accused was hospitalised and the procedure followed by the personnel involved, (ii) to obtain a detailed medical report from the Detention Unit doctor on the health of the Accused, (iii) to appoint as medical expert Dr Sergei Nickolaevitch Avdeev, who had already been involved in a medical examination of the Accused in 2010-2011 or, should he be unavailable, another Russian doctor, and to submit his detailed report on the health of the Accused within 30 days from the date of the return of the Accused to the Detention Unit.[179]

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[175] "Registry Submission Pursuant to Rule 33 (B) Regarding Expert Medical Panel", 16 March 2011 (public) ("Registry Submission of 16 March 2011"), paras 2, 3 and 5.
[176] Registry Submission of 16 March 2011, para. 3..
[177] "Registry Submission Pursuant to Rule 33 (B) Regarding Expert Medical Report", 5 July 2011 (public with confidential and *ex parte* annex) ("Registry Submission of 5 July 2011").
[178] According to the medical report, the Accused suffered mainly from sleep apnea, which required additional treatment, from asthma, arterial hypertension, atrial fibrillation and obesity (*see* Registry Submission of 5 July 2011, confidential and *ex parte* annex, p. 5; *see* also the Administrative Hearing, "T(E)" of 23 August 2011, p. 17013 *et seq.*).
[179] "Order to Obtain Reports from United Nations Detention Unit and to Proceed with a New Medical Examination", 12 January 2012 (public) ("Order of 12 January 2012").

81. On 3 February 2012, the Registry informed the Chamber that the Accused had refused to be examined by the Russian cardiologist appointed by the Registry as expert pursuant to the Order of 12 January 2012 and that he would refuse to be examined by any doctor appointed pursuant to the orders of the Chamber.[180] At the Administrative Hearing of 7 February 2012, the Accused confirmed in person that he refused henceforth to be examined by any medical expert appointed by the Tribunal and to disclose any information on his health.[181] The Chamber took note of this refusal which, moreover, made it impossible to carry out in full the Order of 12 January 2012.[182]

d) Fourth Evaluation

82. Following another hospitalisation of the Accused on 9 March 2012,[183] the Chamber *proprio motu* ordered the Registrar on 12 March 2012 to appoint a panel of three medical experts and to submit, as soon as possible and within 30 days from the date of the said order at the latest, their report on whether the detention of the Accused at the Detention Unit was compatible with his state of health.[184]

e) Examination by Serbian Doctors

83. In the meantime, on 27 January 2012, the Registry informed the Chamber that the allegations by the Accused that his right to be examined by a doctor of his choice were being violated were without grounds, because: (i) this right is guaranteed to the Accused under Rule 31 of the Rules on Detention but he did not make any requests pursuant to this Rule until 23 January 2012, and (ii) the request of the Accused to be examined by Serbian doctors, presented on 23 January 2012, was granted by the

[180] "Registry Submission Pursuant to Rule 33 (B) in Response to '*Ordonnance aux fins d'obtenir des rapports du quartier pénitentiaire des Nations Unies et de faire procéder à une nouvelle expertise médicale*'", 3 February 2012 (public), para. 3.
[181] Administrative Hearing, "T(E)" of 7 February 2012, pp. 17073 to 17075.
[182] Administrative Hearing, "T(E)" of 7 February 2012, pp. 17076 to 17077.
[183] The Accused was once again hospitalised for a period of just over 24 hours and returned to the Detention Unit on 10 March 2012. *See* also the Defence Closing Argument, "T(E)" of 14 March 2012, pp. 17343 to 17345 (provisional version).
[184] "Order to Proceed with a New Medical Examination", 12 March 2012 (public), p. 2. The Chamber also encouraged the Accused to cooperate and show good will by allowing the three medical experts

Registry and all the provisions were put in place to enable this examination that was due to take place on 26 and 27 January 2012.[185]

f) Allegations Relating to a Non-Prescribed Pill

84. With respect to the allegations about a non-prescribed pill that the Accused had found among the medication that was given to him on 5 January 2012, the day before he was hospitalised, the Registry informed the Chamber on 27 January 2012 that an enquiry was immediately launched following the complaint of the Accused.[186] This enquiry revealed: (i) that this was a pill that had already been prescribed to the Accused but in a larger dose; (ii) that even if the Accused had taken the pill – which was not the case – it would have had no effect on his health, and (iii) two scenarios could explain the provenance of this pill: this was either a human error that occurred while distributing medication, or the Accused had obtained it from another source and placed it deliberately among the medication given to him.[187] The explanations of the Registry clearly show – notwithstanding the fact that the Accused had not taken the medication which was, according to the Registry, in any case harmless – that the incident had not caused any harm to the health of the Accused and is in no way connected to the reasons for his hospitalisation the following day.

g) Private Visits During Hospitalisation

85. On 27 January 2012, the Registry also informed the Chamber that, on the one hand, contrary to the allegations of the Accused, his wife was kept informed adequately and continuously of the health of the Accused and on the place of his hospitalisation and, on the other hand, his wife and his son were given permission to visit the Accused in hospital, as soon as they arrived in The Hague on 10 January 2012 as well as on the following days.[188]

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who were appointed pursuant to the said Order to examine him and/or to allow them access to his medical records (*ibid.*).

[185] "Registry Submission Pursuant to Rule 33 (B) Regarding Letter by Legal Associate", 27 January 2012 (confidential with confidential and *ex parte* annex) ("Registry Submission of 27 January 2012"), para. 6.

[186] Registry Submission of 27 January 2012, para. 7.

[187] Registry Submission of 27 January 2012, para. 7 and annex paras 1 to 11.

[188] Registry Submission of 27 January 2012, para. 8.

3. Conclusions of the Chamber

86. In light of the above, the Chamber considers that, as a detained person, the Accused has adequate access to medical care, without any discrimination. In any case, the Chamber recalls that it is up to the Accused, should there be a complaint or a disagreement on the conditions of his detention, to resort to the routes open to him pursuant to Rules 30 to 39 and 80 to 84 of the Rules on Detention.

H. The Alleged Violation of the Rights of the Accused to Be Tried within a Reasonable Time

1. Arguments of the Accused

87. The Accused claims that the Tribunal has violated his right to be tried within a reasonable time and refers in this respect to the repeated delays in the procedure; on this ground he seeks damages in the amount of 500,000 euros.[189] According to the Accused, a detained person has the right to be tried within a reasonable time or, failing this, to be granted provisional release during the trial.[190] The Accused complains that the length of his detention is excessive and that the Chamber has never justified the length of his detention.[191] Moreover, the Accused refers to the excessive length of time that elapsed between the start of his detention in February 2003 and the start of the trial in November 2007.[192]

2. Analysis and Conclusions of the Chamber

88. The Chamber wishes to recall that the issue of the length of provisional detention has been the subject of several decision. Notably, in the Decision of 23 July

[189] Submission, paras 13 and 14, 54 to 58. *See* also the Defence Closing Argument, "T(E)" of 14 March 2012, pp. 17338 to 17339 (provisional version).
[190] Motion, paras 55 and 57 relating mainly to the following texts: Article 5 (3) of the ECHR; Article 9 (3) of the ICCPR; Article 7 (5) of the ACHR; Article 60 (4) of the ICC Statute. The Accused also refers to the case-law of the European Court of Human Rights on the right of the accused to be tried without undue delay and on the reasonable nature of the length of the detention of an accused.
[191] Submission, paras 56 to 57.
[192] Submission, para. 56.

2004, Chamber II denied a motion of the Accused seeking release while awaiting his trial, deeming in particular that the conditions required for provisional release pursuant to Rule 65 (B) of the Rules had not been met.[193] In a decision of 13 December 2005, Chamber II denied the motion of the Accused in which he requested that Chamber II render an order for the trial to commence on 24 February 2006, to abolish his detention, to dismiss the Indictment and to release him.[194]

89. In the Decision of 10 February 2010 on the oral request of the Accused for abuse of process,[195] the present Chamber also denied a request of the Accused in which he argued, among other things, that the length of his detention was excessive and that he had waited for five years for his trial to commence.[196] The Chamber notably deemed that, in light of the complexity of the case, the number of witnesses heard, exhibits tendered before the Chamber, the behaviour of the parties and the seriousness of the charges against the Accused, the right of the Accused to be tried without undue delay had not been violated.[197]

90. In the Decision of 29 September 2011,[198] the Chamber denied another motion of the Accused on the same subject[199] recalling that in its Decision of 10 February 2010 on the Abuse of Process, it had emphasised that international and European case-law clearly established that there was no predetermined time-limit beyond which

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[193] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Defence Motion for Provisional Release", 23 July 2004 (public) ("Decision of 23 July 2004").

[194] In this respect Chamber II has noted that, on the one hand, the Pre-Trial phase in the case had not come to an end at the time and that it could not therefore fix a date for the trial to commence and, on the other hand, that the Accused had not shown any change of circumstances which prevented the Chamber from concluding in the previous Decision of 23 July 2004 that the terms set out in Rule 65 (B) of the Rules had been met (*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Request of the Accused for Trial Chamber II to Issue an Order for the Trial to Commence by 24 February 2006 or an Order to Abolish Detention, Dismiss the Indictment and Release Dr Vojislav Šešelj (Submission Number 116)", 13 December 2005 (public), pp. 2 and 3).

[195] "Decision on Oral Request of the Accused for Abuse of Process", 10 February 2010 (public) ""Decision of 10 February 2010 on the Abuse of Process"), para. 32.

[196] Status Conference, "T(E)" of 20 October 2009. pp. 14756 to 14762.

[197] Decision of 10 February 2010 on the Abuse of Process, paras 28 to 32.

[198] "Decision on Motion by the Accused to Discontinue Proceedings", 29 September 2011 (public) ("Decision of 29 September 2011"), paras 32 to 33.

[199] "Motion to Discontinue the Proceedings Due to Flagrant Violations of the Rights to a Trial Within a Reasonable Period in the Context of the Doctrine of Abuse of Process", 8 July 2011 (confidential; public version filed on 13 July 2011). In this motion, the Accused requested that the Chamber discontinue his trial on the grounds of the doctrine of abuse of process, claiming flagrant violations of his rights. More specifically, he argued that the length of his detention was excessive without the

a trial would be considered unfair due to undue delay.[200] The Chamber also pointed out that it had frequently shown that it continuously ensured the respect of the rights of the defence, such as the one recognised under Article 21 (4) (c) of the Statute.[201] The Chamber, moreover, noted that the Accused had not requested certification to appeal the Decision of 10 February 2010 on the Abuse of Process nor its reconsideration by the Chamber. Therefore, concluding that the Accused had not exercised his right to appeal the Decision of 10 February 2010 on the Abuse of Process, the Chamber decided, in this respect, only to examine his arguments for the period after 10 February 2010.[202] The Chamber noted that since 10 February 2010, there had not been any particular delay to the trial or any suspension, and found that the Accused had not seized it of any request for provisional release pursuant to Rule 65 (B) of the Rules.[203] Consequently, the Chamber deemed that the Accused did not present any evidence allowing it conclude that an abuse of process had occurred or, more specifically, that the nature of his detention in light of procedural developments in the case that arose after 10 February 2010 was excessive.

91. Considering that in the present Submission, the Accused essentially reiterates the same arguments that were analysed and rejected by the Decisions of 10 February 2010 on the Abuse of Process and of 29 September 2011, the Chamber does not find it timely to re-examine them on their merit. The Chamber, moreover, considers that the arguments of the Accused according to which, on the one hand, the Judges of the Tribunal have shown bias against him[204] and, on the other hand, the successive amendments of the Indictment demonstrated that the Prosecution continuously acted

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Chamber reaching the trial phase or rendering a decision on the question of whether this length represented a violation of his right to be tried in a reasonable period (*ibid.*, paras 15, 16, 19, 20 and 73).

[200] Decision of 29 September 2011, para. 27.

[201] Decision of 29 September 2011, para. 27.

[202] Decision of 29 September 2011, para. 28.

[203] Decision of 29 September 2011, para. 13. The Chamber, moreover, noted that the Accused restricted himself in his motion to denouncing the length of his detention by comparing it to that of the accused tried in international and local legal courts, whose complexity was not comparable to this case and by invoking the speed of international proceedings that are not of a criminal nature and that were mainly conducted without the appearance of witnesses. The Chamber, moreover, noted that there have been some trials, especially at the ICTR, that lasted much longer than this case and to which the Accused did not refer (Decision of 29 September 2011, para. 30).

[204] Submission, paras 56 to 57. With respect to the alleged delays in the proceedings, the Accused claims that the numerous Judges before whom he appeared since the beginning of his detention have shown bias against him and thus contributed to the delays in the procedure. *See* also Defence Closing Argument, "T(F)" of 14 March 2012, pp. 17336 to 17339 (provisional version).

in violation of its obligations,[205] are completely unsubstantiated and will therefore not be successful.

92. In view of the above, the Chamber remains convinced that the Accused has not shown that his right to be tried within a reasonable time had been violated nor that the length of his preventative detention is excessive. With respect to the latter, the Chamber recalls that it is up to the Accused, should he so wish, to file a reasoned request for provisional release in line with Rule 65 (B) of the Rules.[206]

[205] Motion, para. 57. *See* also Defence Closing Arguments, 20 March 2012, T. 17467 to 17468 (provisional release). The Accused, moreover, reiterates that the drafting of the initial Indictment was unlawful and criminal – its goal being to eliminate the Accused from the Serbian political scene – and that its confirmation by the Tribunal also constitutes a crime (*ibid.*). The Chamber recalls that all the amendments to the initial Indictment were confirmed by respective decisions by Chambers seized of the case, ensuring that the Accused was duly informed of the charges against him. The Accused then had the possibility to appeal these decisions, which he did several times (*see*, for example, *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR72.1, "Decision on Motion for Reconsideration of the 'Decision on the Interlocutory Appeal Concerning Jurisdiction' Dated 31 August 2004", 15 June 2006 (public) (*see* also *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR72.1, "Decision on Interlocutory Appeal Concerning Jurisdiction", 31 August 2004 (public) reversing *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of Indictment", 3 June 2004 (public)); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Prosecution's Motion for Leave to Amend the Indictment", 27 May 2005 (public); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Corrigendum to the Amended Indictment Annexed to the Prosecution's Motion for Leave to Amend the Indictment", 8 July 2005 (public); *The Prosecution v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Request to the Prosecutor to Make Proposals to Reduce the Scope of the Indictment", 31 August 2006 (public); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on the Application of Rule 73 *bis*", 8 November 2006 (public); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Prosecution's Motion for Leave to File an Amended Indictment", 14 September 2007 (public); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Preliminary Motion Filed by the Accused", 27 November 2007 (public); *The Prosecution v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision Regarding Third Amended Indictment", 9 January 2008 (public); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Submission Number 311 Requesting that Chamber III Clarify the Prosecution's Pre-Trial Brief", 20 September 2007 (public); "Oral Decision Concerning the Motion of the Accused Made on 8 January 2008 to Prohibit the Calling of Witnesses Connected with the Places which Have Been Withdrawn from the Indictment According to Decision Concerning Article 73 *bis*", "T(E)" of 9 January 2008, pp. 2251 to 2255 (public hearing); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.7, "Decision on Appeal Against the Trial Chamber's Oral Decision of 9 January 2008", 11 March 2008 (public)).

[206] The Chamber notes that on 20 March 2012, during his Closing Argument, the Accused made a request for provisional release (Defence Closing Argument, 20 March 2012, T. 17537 (provisional version)). The Chamber will rule on this request in due time.

I. Allegations Relating to Contempt Proceedings against the Accused

1. Arguments of the Accused

93. The Accused refers to three contempt of court proceedings that were initiated against him at the Tribunal despite the fact that, according to him, this offence is not even envisaged by the Statute or by customary international law and seeks, on these grounds, damages in the amount of 100,000 euros.[207] The Accused simultaneously claims that the prison sentences to which he was convicted in the first two contempt of court proceedings, to 15 and 18 months respectively, are higher than the ones imposed on other accused before the Tribunal.[208]

2. Analysis and Conclusion of the Chamber

94. With respect to the first contempt proceedings mentioned by the Accused, the Chamber recalls that, in the Judgement of 24 July 2009, Chamber II stated that the Accused was guilty of contempt of the Tribunal and sentenced him to 15 months in prison, for deliberately and knowingly hindering the course of justice by revealing confidential information about three witnesses, in violation of the protective measures ordered by the Chamber, by publishing excerpts from a confidential written statement by one of them in a book he wrote.[209] In the Judgement of 19 May 2010, the Appeals Chamber dismissed all eight grounds of appeal raised by the Accused and upheld the sentence against him.[210] The present Chamber does not have the jurisdiction to reconsider the decisions and the judgements rendered by other Trial Chambers. Moreover, since the Appeals Chamber definitively ruled on arguments that are identical to those presented in the present Submission, the only recourse open to the Accused in respect of the Judgement of 24 July 2009 and the Judgement of 19 May

[207] Submission, paras 59 to 63.
[208] Submission, paras 59 to 60.
[209] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, "Judgement on Allegations of Contempt", 24 July 2009 (confidential, public redacted version was filed on the same day) ("Judgement of 24 July 2009").
[210] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, "Judgement", 19 May 2010 (public redacted version) ("Judgement of 19 May 2010").

2010 is review proceedings, on condition that the terms set out in Rule 119 of the Rules are complied with.

95. With respect to the second contempt proceedings mentioned by the Accused, the Chamber notes that in the Judgement of 31 October 2011, Chamber II pronounced the Accused guilty of contempt of the Tribunal and sentenced him to 18 months in prison for having deliberately and knowingly hindered the course of justice by revealing confidential information regarding ten protected witnesses in a book he wrote, in violation of the protective measures ordered by the Chamber.[211] The *Amicus Curiae* Prosecutor brought an appeal against the said Judgement and the proceedings are currently pending before the Appeals Chamber.[212] Thus, the Chamber has no jurisdiction to assess the arguments of the Accused opposing the Judgement of 31 October 2011.

96. Finally, in respect of the third contempt proceedings mentioned by the Accused, the Chamber notes that in the order in lieu of the Indictment, on 9 May 2011 Chamber II started contempt of court proceedings against the Accused for not removing confidential information from his private internet site, in violation of the orders of the Chamber.[213] These proceedings are currently ongoing. In addition to the fact that the Accused has still not had a judgement and has not exercised the recourse available to him, the Chamber recalls that it does not have jurisdiction to rule on the charges presented before another Trial Chamber of the Tribunal.

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[211] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, "Public Redacted Version of 'Judgement' Issued on 31 October 2011", 31 October 2011 (public redacted version) ("Judgement of 31 October 2011"). Moreover, Chamber II ordered that this 18-month sentences be served concurrently with the one pronounced in the Judgement of 24 July 2009.

[212] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, "Amicus Curiae Prosecutor Notice of Appeal Against Sentence", 14 November 2011 (public). The Chamber notes that the Accused sent a letter to the Appeals Chamber on 17 November 2011, in which he indicated that he intended to appeal the Judgement of 31 October 2011 (*The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, "Submission No. 482 (Preliminary Reply to Prosecutor's Appeal)", 21 November 2011 (public): "[...] I myself intend to file an appeal against the second judgement for contempt of court, dated 31 October 2011 [...]"). The Chamber notes, however, that the Scheduling Order of the Appeals Chamber dated 7 February 2012 only mentions an appeal brought by the *amicus curiae* (*The Prosecutor v. Vojislav Šešelj*, Case NO. IT-03-67-R77.3-A, "Scheduling Order", 7 February 2012 (public)).

[213] *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4, "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 (public redacted version), amended by "Public Edited Version of 'Second Decision on Failure to Remove Confidential Information from Public Website and Amended Order in Lieu of Indictment' Issued on 21 October 2011", 28 October 2011 (public redacted version).

97. In view of the above, the Chamber can only conclude that there have been no violations of the rights of the Accused in respect of the aforementioned contempt proceedings.

J. Compensation

98. Having concluded that none of the allegations of the rights of the Accused having been violated are substantiated, the Chamber considers that the requests for compensation presented by the Accused in respect of these alleged violations are moot. Consequently, it does not need to rule, in particular, on its jurisdiction to examine this request for compensation, or to analyse the arguments of the Accused on the *Rwamakuba* Decision of 31 January 2007.[214]

III. DISPOSITION

99. **FOR THE FOREGOING REASONS**, the Chamber **DENIES** the Submission in its entirety.

100. Presiding Judge Antonetti hereby attaches a separate and concurring opinion.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]

[214] *See* also, *André Rwamakuba v. The Prosecutor*, Case No. ICTR-98-44C-A, "Decision on Appeal Against Decision on Appropriate Remedy", 13 September 2007, paras 25 to 30.

ANNEX: SEPARATE AND CONCURRING OPINION OF PRESIDING JUDGE JEAN-CLAUDE ANTONETTI ON THE CLAIM FOR COMPENSATION PRESENTED BY THE ACCUSED VOJISLAV ŠEŠELJ

By expressing his thinking through an opinion attached to a decision, a Judge allows the reader to understand more clearly his personal position with regard to a request from a Party.

This opinion has one aim: **to contribute to the building of international justice by resolving the question that has arisen.**

The question raised by this request is *a priori* interesting if it comes under a precise legal framework providing a right to remedy, if judicial dysfunction occurs in the institution; this dysfunction would turn an accused into a victim of the workings of the legal institution.

The legal grounds for the right to remedy were set out in international legislation on human rights. Amongst others, the Universal Declaration of Human Rights (Article 8) and the International Covenant on Civil and Political Rights (Article 8) form part of this international legislation.

A remedy for prejudice suffered may take **several forms**:

- **Restitution**: This is a matter of restoring the situation of the victims to the original state;

- **Compensation**: Any damage resulting from flagrant violations of international human rights may lead to a financial assessment proportionate to the gravity and the circumstances;

- **Rehabilitation**: This involves providing medical and psychological care to the victim;

- **Satisfaction**: This category involves measures designed to put an end to the violations;

- **Guarantees of non-repetition**: This involves institutional reforms in order to avoid violations of human rights.

At the level of International Criminal Tribunals, only the Rome Statute of the International Criminal Court asserts the right to remedy for victims in the cases tried by the Court (Article 75) and establishes a fund for the benefit of victims (Article 79).

It is worth noting that these articles refer **solely** to victims of offences envisaged and sanctioned by the Rome Statute and **not** the victims of judicial dysfunction.

Consequently, I completely support the arguments of the Chamber with respect to denying the claim for compensation amounting to 2 million euros filed by the Accused.

In order to have a clear view of the submission, I have nevertheless drawn up the following table integrating all the filings of the Accused.

	Grievances	**Reasoning**	**Amount (€)**
1	Attempt to impose an attorney	According to the Accused, Article 21 of the Statute envisages the possibility for an accused to defend himself	300,000
2	Prevented from becoming familiar with the legal sources cited by the Trial Chamber in its decisions and by the Prosecution in its submissions	The Accused invokes the right to be informed promptly and in detail under Article 9 (2) of the UN Covenant II, 5 (2) ECHR (...) and the right of any person suspected of having committed a crime to prepare his defence while awaiting trial, whether in detention or not, pursuant to Article 14 (3) (a) UN Covenant II, 6 (3) (a) ECHR (...)	100,000

3	The Chamber refused to present him with documents in a language (Serbian) that he understands and in hard copy	According to the Accused, an arrested person must be able to be informed of the reasons for his incarceration in a language he understands, inferred from Article 14 (a) of the UN Covenant II (...) He claims not to have received any document in his language and in hard copy since 2006.	100,000
4	Violation of his right to legal assistance for several years	The Accused invokes the right of access to an attorney or legal adviser pursuant to Article 55 (2) (c) of the Rome Statute (...). He refers in particular to case: *The Prosecutor v. André Rwamakuba*. He claims that he was only able to meet with his legal adviser and his case manager on 21 December 2006, therefore around four years after he was detained.	200,000
5	Prohibited from communicating with his legal advisers	The Accused invokes his right to communicate in complete confidentiality with his legal advisers, inferred from Article 21 (4) of the Statute, 20 (4) (b) of the ICTR Statute (...). Since 29 September 2008, privileged communication with his legal advisers has been prohibited.	100,000
6	Prohibited contacts with his family, friends and doctor	The Accused claims that he was denied contacts with his relations and his doctor many times, which could constitute an act of torture or inhumane treatment, inferred from Articles 7 and 10 of the UN Covenant II.	200,000
7	Violation of his right to compensation for his defence and of the principle of equality of arms	The Accused invokes his right to compensation from the first day of his detention, on 24 February 2003, and for violation of the principle of equality of arms	400,000
8	Deliberate delays to proceedings	The Accused invokes the right to be tried within a	500,000

		reasonable time or to be released, inferred from Article 9 (3) of the UN Covenant II, Article 5 (3) of the ECHR (...). The Accused claims to have spent nine years in detention without a judgement having been rendered by the Trial Chamber	
9	Being tried for an offence (contempt of the Tribunal) which is not set out in the Statute of the ICTY and has no basis in customary international law	According to the Accused, Rule 77 of the Rules does not provide for contempt	100,000
			Total 2,000,000

The above table provides a complete overview of these requests.

Before any examination of his grievances on these points, we need to ask whether the Statute of the Tribunal allows for compensation linked to dysfunction and, if so, does the budget of the Tribunal have a budgetary allowance for compensation?

An examination of the Statute makes it clear from the start that the response is **negative**, since the Statute does not make provisions for any right to compensation resulting from the dysfunctioning of the Tribunal. Furthermore, the biennial budgets do not make any mention of the existence of such an amount.[215]

For this reason, **if, as an exception,** the Judges decided to allocate such an amount, how would it be paid if no fund has been set aside for this?

[215] Report of the United Nations Secretary General, "Budget for 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, for the Biennium 2012-2013", 29 September 2011, UN Doc. A/66/386.

In addition to this question, we must examine the case-law of the Appeals Chamber relating to *The Prosecutor v. Rwamakuba* Case.[216] This case took the following course:

On 20 September 2006, André Rwamakuba was acquitted of all charges against him and released after having spent more than eight years in detention.

On 25 October 2006, Mr Rwamakuba filed a motion for appropriate remedy for the violation of his right to be assisted by counsel and for a grave and manifest injustice which he had suffered, in particular due to the manipulation of the evidence against him during the trial.

On 31 January 2007, Trial Chamber III[217] denied his request for compensation for a grave and manifest miscarriage of justice and ordered the Registrar to pay Mr Rwamabuka 2,000 dollars. It recognised that the right to the assistance of an attorney was violated because the Registrar did not appoint Duty Counsel to assist him during the initial months of his detention, from 22 October 1998 to 10 March 1999.

Mr Rwamakuba brought an appeal in order to have the right to compensation for a grave and manifest miscarriage of justice recognised. In its findings, the Registry opposed the payment of the 2,000 dollars, among other things.

In its decision of 13 September 2007, the Appeals Chamber recognised that Trial Chamber III had the authority to grant an appropriate remedy to an accused whose rights had been violated, despite there being no specific provision in the Statute or the Rules. It recalled the international right to remedy applicable in cases of violation of the rights of the accused, as contained in Article 2 (3) (a) of the Covenant on Civil and Political Rights and that such a right ensues from Article 19 (1) of the Statute. It observed, in particular, that the Statute and the Rules do not provide for a reduction of the penalty, even though this has been granted in other cases.

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[216] *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-A, "Decision on Appeal Against Decision on Appropriate Remedy", 13 September 2007.
[217] *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-T, "Decision on Appropriate Remedy", 31 January 2007.

The Appeals Chamber equally considered that the financial remedy was an appropriate form within the context of the relief applicable for the violation of the rights of Mr Rwamabuka.

The Appeals Chamber thus upheld the right of Mr Rwamabuka to obtain an appropriate remedy of 2,000 dollars and denied his claim for compensation for a grave and manifest miscarriage of justice.

An examination of the decision of the Appeals Chamber reveals that it recognised the right to compensation due to the fact that he did not have an attorney for several weeks and, for this reason, he was entitled to a payment of 2,000 dollars.

I must indicate that I do not agree with this point of view at all because the fact that he did not have an attorney should have led to the **nullity** of the acts that took place in the absence of an attorney and not to compensation being granted which, moreover, is not provided for in the Statute.

In the case of the Accused Šešelj, we are in a completely different situation, since he did not want an attorney and at procedural level there was a whole series of consequences linked to the imposition of a stand-by counsel. In this case, I believe that there was no reason for nullity of procedure and even less reason to apply the right to compensation.

On the alleged grievances, in addition to the reasoning set out in the present decision, I would like to put forward certain aspects.

* *On Grievance No. 1*

Though Article 21 of the Statute actually envisages that an accused may defend himself, it also envisages that he has right to an attorney and it is therefore logical that the Administration of the Tribunal assigned an attorney to him and he therefore has no right to compensation since an attorney was assigned to him.

The right of the Accused to defend himself is right he draws from the Statute of the Tribunal, I must conclude, unfortunately, that another Chamber has not sanctioned this right in its decisions. As a member of the pre-trial Chamber, I felt at the time that I needed to issue an opinion on the **question of self-representation**.

If there is an "insistence" on imposing an attorney on him, it is certainly not because of his lack of legal knowledge since if a Professor of law is not able to understand the stakes involved in a criminal trial, how is it possible that, in certain cases, he can be called to become an international Judge?

Of course, it is preferable for the sake of **dispassionate justice** to have an attorney who will follow a code of professional conduct rather than an Accused who defends himself without a code of professional conduct. Taking into account this fact leads to the adoption of an "easy option" for the Judges to the extent that the Accused has from the beginning contested the legality of this Tribunal, invoking the existence of a conspiracy in which the Registrar, the Prosecutor and the Judges are involved. It was therefore **foreseeable** that the course of justice would not be dispassionate and encounter many difficulties; which has been our situation.

Nevertheless, it would be paradoxical to recognise his right to compensation since an attorney was imposed on him in the past. For this reason, I cannot therefore subscribe to his arguments.

* *On Grievance No. 2*

The Accused explains that he did not have access to information either on legal sources or on the decisions and submissions of the Prosecutor. Indeed, he has the right to information, but if he does not understand (which would be surprising for a Professor of Law), he must have access to an attorney and not defend himself, because if he defends himself he must also accept the drawbacks.

* *On Grievance No. 3*

The Accused maintains that he has not received any documents in his language since 2006. Disclosure in his language is only foreseen formally for the Indictment. All other documents may be disclosed to the Accused in one of the two working languages of the Tribunal. No provisions have been made (unfortunately) for him to have disclosure in his own language, but here, also, the fact that he defends himself without linguistic ability in one of the two working languages of the Tribunal could be an obstacle, because when encountering certain problems he could otherwise have engaged an attorney.

* *On Grievance No. 4*

The Accused invokes case-law in *The Prosecutor v. André Rwamakuba* Case. I note that for the time being he has not been acquitted and it is therefore difficult for him to invoke this case-law because he is not in the same situation. Moreover, the fact that he was only able to meet with his legal adviser and his Case Manager on 21 December 2006 was solely due to the fact that the Administration of this Tribunal and the Judges initially seized of the case wanted him to have an attorney and that this question was only finally settled in a decision of the Appeals Chamber which acknowledged his right.

Furthermore, this grievance focuses on **the question of the legal adviser**. I find that a person who defends himself has the legal capacity to defend himself without the assistance of anybody; if this is not the case and this person has not got this capacity, he should appoint an attorney. Who is going to believe that an eminent Professor of Law has need of a legal adviser? He is more in need of "a helping hand" to assist him in minor issues.

When the Accused chose to defend himself without anyone compelling him to do so, he should have known that there would also be some drawbacks. If the Accused chooses this option, he must be able to conduct himself without seeking assistance from anyone or, if not, he has the possibility to resort to an attorney without the need for other legal adviser(s).

On the other hand, he is certain that those who assist him may and must be remunerated, but on the basis of actual invoices justifying the amounts of expenditure in order to respect the wording and spirit of the Statute on the resources available to an Accused. The lack of specification and, it must be said, the **empty space** that exists in the question of self-representation lead to a number of problems. Indeed, if the authors of the Rules had taken this into account at the beginning, the Tribunal could have avoided many diversions in the management of cases in which the Accused chooses to defend himself.

This principle should have been acknowledged as early as 1994 in the Rules, specifying that to defend oneself consequently means that the Accused receives limited assistance from the Tribunal, or else this results in a farce; the Accused would otherwise have the right to defend himself, while having a whole battery of legal advisers made up of attorneys.

* *On Grievance No. 5*

The Accused raises the fact that he could not communicate in complete confidentiality with his legal advisers. The Rules on Detention are very clear, they stipulate that the conversation of an Accused can be monitored even with his privileged associates, if pressure or intimidation of witnesses is suspected. The Procedure is very precise, he is informed by letter and he, therefore, cannot invoke any prejudice.

It is clear that monitoring his conversations with his advisers could only lead to the Accused objecting. Again, why are there privileged associates? It is the Registry which created this category of privileged associates.

As far as I am concerned, the fact that an Accused defends himself allows him access to simple associates without any special status and who, therefore, cannot benefit from the same guarantees as proper attorneys who are covered by professional secrecy.

* *On Grievance No. 6*

The Accused alleges that he was not allowed contact with members of his family and his doctor. This question, in my opinion, falls directly within the remit of the President of the Tribunal.

In its Decision, the Chamber expanded greatly in paragraphs 70 *et seq.* on the **medical issue**. Nevertheless, I wish to add my own comment on this specific point. The Accused, like anyone else, can be ill. This is not a situation peculiar to an accused, but a situation that affects everyone because, even within the Tribunal, Judges have had to abandon their positions because of illness and others have passed away.

Moreover, it is also common that, due to age, illness is evermore present and it is perfectly logical that an accused who is coming up to 60 is more at risk of illness than a young person. In addition, detention also brings with it a succession of health issues.

My own concern, and that of my colleagues, has always been to pay particular care to the health of the Accused because experience has shown that an accused who is ill can hinder the course of justice. Consequently, a responsible and competent Judge must devote **full** attention to the medical condition of the Accused, which I personally have always done. When the Chamber noticed that the Accused could be affected by a diagnosed illness, it immediately appointed an expert, as stated in paragraphs 74 *et seq.* of this Decision.

In the case of this Accused, three examinations were conducted. Unfortunately, for personal reasons, the Accused did not want to meet the British cardiologist, the reason being that he was a national of a NATO member state, the institution that bombed his country. In view of this situation, the two other experts, one of whom was Russian, however deemed that they could carry out their examination despite the "failing" of the British cardiologist. I made it my business to disclose the findings in the report of the two experts to the Accused during a public hearing in order to ensure that nothing

was hidden from him and that all the information relating to the problems was known to everyone.

At the time, the Accused did not oppose the findings of these experts. After that, the Chamber never received anything from either the prison doctor or the Accused. I did not find out about the potential problem with his illness until I read the transcript of the UN Security Council following the report on the working of the Tribunal drawn up by the President of the Tribunal. This document revealed that the Russian Ambassador was worried about the health of the Accused.

The only purpose of the intervention of the Russian Ambassador was to call for a report at the next meeting of the Security Council, there was no urgent or immediate request.

The medical unit in the prison comes, first and foremost, under the Registry and the President, the Chamber only being seized of requests from the Accused; it must be noted that we have not been seized of any request.

At the start of 2012, we learned that the Accused had been hospitalised after an illness, without knowing the exact circumstances. Since then, we know that he has undergone treatment at the Leiden Hospital, but we have no precise medical information since the Russian expert whom we appointed is not able to fulfil his task because the Accused has refused to meet with him. In addition, the Accused does not wish to provide information on his health, which he confirmed during the hearings.

The Chamber has only obtained bits and pieces of information, it nevertheless notes that the prison doctor has given a green light for the Accused to attend hearings.

Having said this, it must be noted that every attempt has been made to accommodate the Accused who, for reasons of his own, has created problems even with regard to the handling of his medical issues. After all, nothing prevented him from seeing the British cardiologist and telling him about his symptoms and, on the basis of this information, the three appointed experts could have drawn up a detailed report. Had

the Accused not agreed with the report, he could have asked for another expert examination.

The Trial Chamber equally asked a panel of experts to indicate to it whether detention was compatible with the health of the Accused.

The Chamber takes this matter very seriously because the fate of the Accused, like anyone else's, may be decided by the laws of nature. Unfortunately, this Tribunal went through a dramatic moment with the death of Slobodan Milošević and we would not like to find ourselves in the same situation again. In fact, everything possible has been done, but there are certain limits that we cannot overcome due to medical confidentiality rules in the Netherlands and the attitude of the Accused, who challenges the Tribunal in all its aspects.

* *On Grievance No. 7*

The Accused invokes his right to compensation for the violation of the principle of equality of arms. What does the concept of "equality of arms" mean? It means that the Accused may, with respect to his evidence, have the same resources as the Office of the Prosecutor. In what respect did the Accused in the present trial not have access to his own evidence when he has shown that he was able to get a full statement from a witness in a few hours?

* *On Grievance No. 8*

The Accused once more raises the matter that he was not tried within a reasonable time. There is very comprehensive case-law at the European Court of Human Rights on the fact that the concept of reasonable time must be applied on a case-by-case basis, taking particular account of the difficulty of the case. I am profoundly convinced that this case was not a simple one from the start and that all the delays that have occurred have been linked to the complexity of the case and the intransigence of the Accused. I do not feel that the successive delays are in any way the fault of the present Chamber.

* *On Grievance No. 9*

The Accused raises the question of an offence that is not provided for in the Statute. From a legal point of view, this may be a matter for discussion, but I do not see how this would lead *ipso facto* to a right to compensation.

Due to a lack of serious grounds, this claim should be denied.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-first day of March 2012
At The Hague
The Netherlands

[Seal of the Tribunal]