



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed
in the Territory of the Former Yugoslavia
since 1991

Case No.: IT-03-67-T
Date: 13 November 2013
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Mandiaye Niang
Judge Flavia Lattanzi

Registrar: Mr. John Hocking

Order of: 13 November 2013

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**JUDGE ANTONETTI'S CONCURRING OPINION ON DECISION
INVITING THE PARTIES TO MAKE SUBMISSIONS ON
CONTINUATION OF PROCEEDINGS**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen

The Accused:

Mr. Vojislav Šešelj

I agree fully with this *proprio motu* decision requesting the parties to give **their opinion on the continuation of proceedings**.

At this stage of the trial, with the Accused in provisional detention for more than **ten years**, I have serious questions about the prospects of the proceedings and have to turn to the parties for their opinion on the issues referred to below in order to decide on the continuation of the proceedings. It has to be noted that these are technical issues regarding the continuation of proceedings.

It has always been my objective to **expedite** the trial in keeping with the requirement laid down in the Tribunal's Statute.

Unfortunately, external events beyond my control prevented me from reaching this objective.

I deem it useful at this stage, in order to obtain informed responses from the parties, to bring up the issues which may delay or shorten the proceedings:

- **Permanent assignment of a team of assistants to the Chamber under a permanent legal officer of the Chamber**
- **Initiation of a contempt of Court investigation**
- **Identification of the exact starting point for the continuation of the proceedings**
- **Assignment of a reserve Judge**

(A) Permanent assignment of a team of assistants to the Chamber under a permanent legal officer of the Chamber

This case has suffered multiple setbacks related, on the one hand, to the stand-by Counsel assigned at the outset of the proceedings who was challenged for a long time

by the Accused until the Appeals Chamber acknowledged his right to defend himself and, on the other hand, to the difficulties the Trial Chamber encountered in connection with the working conditions.

The Trial Chamber was confronted with the successive departure of the Chamber's legal officers for personal reasons linked to the Tribunal's Completion Strategy which led them to opt for other jobs. Consequently, every departure of a person in charge entailed the induction of a new person in charge, which was one of the reasons for extending deadlines.

During deliberations, three legal officers successively left the Chamber to take up other jobs. I believe that, had there been better management and recruitment that took into consideration the exigencies of this case, we could have had a person in charge of the legal team on a **permanent basis until the reading of the judgement** so that we would not be faced with this kind of difficulty.

In my opinion, there has been a **serious breakdown in management** since, unfortunately, I do not have the legal power to recruit such a person myself and to issue him orders and directions in the exercise of his function.

In a sense, the Judges are prisoners of a system where their only role is to wait for drafts from legal officers who fall under the **Registrar's**, not the Judges', administrative authority.

If the current staff is not **retained**, there may be consequences for the work of the future Chamber.

(B) Initiation of a contempt of Court investigation

The publication of a Judge's private letter by a **Danish newspaper** led to the work of the Chamber being suspended and the replacement of the Judge concerned.

This publication undoubtedly interrupted the administration of justice as the Judgement was due to be rendered on **30 October 2013**.

Rule 77 (A) of the Rules of Procedure and Evidence provides that:

The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who....

I believe it necessary, in case of an investigation, to determine **who** disclosed the Judge's private letter and to what end. The possibility that there was deliberate intent to **interfere** with the administration of justice cannot be excluded. All the more so as we were in the process of deliberating. On a technical level, the investigation should not present major difficulties if the investigator has all the means needed to carry out his work.

I believe the aforesaid has to be done as there are no guarantees that, tomorrow, there will not be another operation of this kind causing further delays in the judgement, which is **unacceptable** given the duration of the Accused's provisional detention.

(C) Identification of the exact starting point for the continuation of the proceedings

The replacement of a Judge during deliberations is **unprecedented** at the level of international justice and the Rules of Procedure and Evidence do not provide for such a situation.

Rule 15 of the Rules of Procedure and Evidence provides only that, if the merits of an application are upheld, another Judge shall be assigned in the place of the Judge in question.

It is the rule that if the Rules are **silent**, a Chamber shall apply its own rules which will best favour a fair determination of the matter before it and in the spirit of the

Statute and the general principles of law. This is referred to under Rule 89 with regard to evidence. By taking as an example the circumstances described in respect of evidence, I believe that I can then apply certain rules in keeping with the Statute and the general principles of law to deliver a judgement **expeditiously**.

There are numerous examples of judges being replaced during a trial for different reasons (except disqualification) and the practice was always governed by the need to **continue**, which is the logic of Rule 15 as well as of Rule 15 *bis* of the Rules in situations other than disqualification. This Rule provides nevertheless for the prior consent of the Accused, which can be overlooked in the interests of justice. It should be noted that the decision may be appealed before a full bench of the Appeals Chamber. The fact that Rule 15 deals only with the replacement of the disqualified Judge by a new Judge does not mean that the opinion of the **two parties** cannot be taken into consideration, as is the case in all other decisions taken by any of the Chambers that may affect the fairness of the trial, in keeping with the fundamental principle of *audi alteram partem*.

Seeking the opinions of the parties will certainly shed light on this matter in the absence of a suitable text in the Rules of Procedure and Evidence.

(D) Assignment of a reserve Judge

Rule 15 *ter* (A) of the Rules of Procedure and Evidence provides that:

The President may, in the interests of justice, assign a reserve Judge to sit with a Trial Chamber in a trial.

Bearing in mind the **excessive** duration of this case and unforeseeable events that may occur at any time, such as the illness or death of a Judge, it seems to me, at first glance, **highly desirable** to assign a reserve Judge to this Chamber in order to avoid such a situation from recurring.

Undoubtedly, had there been a reserve Judge in the Chamber, the replacement of the disqualified Judge would not have created any problems and the reserve Judge would have sat as a regular Judge. Consequently, the judgement would have been delivered at 0900 hours on 30 October 2013.

This is a very important issue and the assignment of a reserve Judge to the Karadžić Case is a good example thereof.

The parties are invited to submit their opinions on this issue.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this thirteenth day of November 2013
At The Hague
The Netherlands

[Seal of the Tribunal]