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UNITED
NATIONS



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

Case No.: IT-03-67-T
Date: 6 November 2014
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: 6 November 2014

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC WITH CONFIDENTIAL ANNEX

**ORDER ON THE PROVISIONAL RELEASE OF
THE ACCUSED *PROPRIO MOTU***

The Office of the Prosecutor

Serge Brammertz
Mathias Marcussen

The Accused

Vojislav Šešelj

TRIAL CHAMBER III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”);

Proprio Motu

CONSIDERING that the Chamber is the guarantor of the respect of the rights of Vojislav Šešelj (“Accused”);¹ that it is particularly concerned by the situation of the Accused while awaiting the Judgement, in particular with regard to the prolongation of the procedure following the replacement of a judge,² and wants to ensure that the provisional detention of the Accused is limited to the strict requirements of the procedure,³

CONSIDERING that the Chamber had recently explored the possibility of provisional release of the Accused *proprio motu* due to the deterioration of his health but had to suspend this initiative because the conditions imposed by the Chamber were not satisfied,⁴

CONSIDERING that the Chamber has since received additional confidential information that points to a deterioration in the Accused’s health, which has already been revealed to the public,

CONSIDERING that every potential decision on provisional release must be based on the specific situation of the accused at the time of the decision;⁵ that the length of provisional detention of an accused is a factor to be taken into account when

¹ See Article 20 (1) of the Statute of the Tribunal (“Statute”) recalled by the Chamber in the “Decision on Continuation of Proceedings”, 13 December 2013, para. 56, public.

² The Chamber initiated a process of consultations *proprio motu*, involving the parties, the Republic of Serbia and the Kingdom of the Netherlands, with a view to possible provisional release of the Accused in June 2013, see in particular “Order Inviting the Parties to Make Submissions on Possible Provisional Release of the Accused *Proprio Motu*”, 13 June 2014, public; “Order Inviting the Accused to State His Commitment to Respect Guarantees of his Possible Provisional Release *Proprio Motu*”, 3 July 2014, public.

³ In particular in regard to the principle of the presumption of innocence of the Accused, Article 21 (3) of the Statute.

⁴ “Order Terminating the Process for Provisional Release of the Accused *Proprio Motu*”, 10 July 2014.

⁵ *The Prosecutor v. Popović et al.*, Case IT-05-88-AR65.4, “Decision on Consolidated Appeal against Decision on Borovčanin’s Motion for a Custodial Visit and Decisions on Gvero’s and Miletić’s Motions for Provisional Release during the Break in the Proceedings”, 15 May 2008, paras 5-6, public.

considering provisional release; and, lastly, that provisional release may be considered on humanitarian grounds, including the health of the accused,⁶

CONSIDERING that in view of this new development and in order to avoid a worst-case scenario, the Chamber is examining *proprio motu* the possibility of provisional release that would allow the Accused to receive treatment in the most suitable environment while at the same time making certain that the security of the witnesses and the integrity of the proceedings will be guaranteed,⁷

CONSIDERING that in accordance with the requirements of Rule 65 of the Rules of Procedure and Evidence ("Rules"), an accused may be granted provisional release if the Chamber is satisfied that, if released, the accused will not pose a danger to any victim, witness or other person and will appear before the Tribunal when the Chamber orders him to do so, and after giving the host country and the State to which the accused is to be released the opportunity to be heard,

CONSIDERING that the Chamber deems that the observations previously submitted by the Office of the Prosecutor are still relevant and render superfluous any new communication on its part,⁸

CONSIDERING that pursuant to Rule 65 (B) of the Rules, the Chamber obtained observations from the Government of the Republic of Serbia, which agreed to the Accused being released to its territory on condition that he adheres to the conditions set by the Chamber,

CONSIDERING that the authorities of the Host State have informed the Chamber that they do not oppose any possible provisional release of the Accused,⁹

⁶ *The Prosecutor v. Šainović et al.*, IT-05-87-A, "Decision on Sreten Lukić's Motion for Provisional Release", 30 March 2012, p. 2, public; *The Prosecutor v. Prlić et al.*, IT-04-74-AR65-26, "Decision on Prosecution Appeal of Decision on Provisional Release of Jadranko Prlić", 15 December 2011, para. 5, public.

⁷ "Order Inviting the Host State and the Receiving State to Submit Observations on Possible Provisional Release of the Accused *Proprio Motu*", 4 November 2014, public.

⁸ "Prosecution Submission on Trial Chamber's *Proprio Motu* Provisional Release of the Accused", public, 20 June 2014.

⁹ Letter from the Ministry of Foreign Affairs of the Netherlands, confidential, 5 November 2014.

CONSIDERING that the Chamber recalls that the Republic of Serbia provided guarantees on condition that the Accused confirms that he will accept them and that he will respect the conditions imposed by the Chamber,

CONSIDERING that insofar as the Chamber will order the release of the Accused strictly on humanitarian grounds, it will not impose on him any condition other than not to influence witnesses and victims, and to appear before the Chamber as soon as it so orders,

CONSIDERING that in view of the current situation, the Chamber is satisfied that the Accused will comply with the aforementioned requirements,

CONSIDERING that this being the case, there is no need to seek the consent of the Accused in this respect,

CONSIDERING that the Chamber, in the exercise of its discretionary power, considers that the compelling humanitarian reasons go in favour of provisional release of the Accused, that the requirements of the procedure do not go against it, that the conditions set out in Rule 65 (B) of the Rules are met in this case and that the Accused can therefore be granted provisional release to the Republic of Serbia,

FOR THE FOREGOING REASONS, the Chamber, by a majority, Judge Niang dissenting,

PURSUANT TO Rules 54, 65 (B) and 65 (C) of the Rules,

ORDERS *proprio motu* the provisional release of the Accused under the conditions set out in the confidential annex attached to this order,

Judge Niang will attach a dissenting opinion to this order.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this sixth day of November 2014
At The Hague

[Seal of the Tribunal]