

**UNITED  
NATIONS**



Mechanism for International Criminal Tribunals

Case No. MICT-16-99-A

Date: 18 September 2017

Original: English

**BEFORE THE APPEALS CHAMBER**

**Before:** Judge Theodor Meron, Presiding  
Judge Lee G. Muthoga  
Judge Florence Rita Arrey  
Judge Ben Emmerson  
Judge Ivo Nelson de Caires Batista Rosa

**Registrar:** Mr. Olufemi Elias

**Order of:** 18 September 2017

**PROSECUTOR**

**v.**

**VOJISLAV ŠEŠELJ**

***PUBLIC***

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**ORDER IN RELATION TO THE APPEAL HEARING**

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**The Office of the Prosecutor:**

Mr. Serge Brammertz  
Mr. Mathias Marcussen  
Ms. Barbara Goy

**The Respondent:**

Mr. Vojislav Šešelj, *pro se*

**THE APPEALS CHAMBER** of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);

**NOTING** the appeal filed by the Prosecution<sup>1</sup> against the judgement rendered in this case on 31 March 2016 by Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia (“ICTY”);<sup>2</sup>

**CONSIDERING** that the briefing in this case is complete;<sup>3</sup>

**CONSIDERING** that, in accordance with Rule 141 of the Rules of Procedure and Evidence (“Rules”), “[a]fter the expiry of the time-limits for filing the briefs [...], the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the Parties”;

**CONSIDERING** that the Appeals Chamber will issue a scheduling order for the appeal hearing in due course;

**NOTING** that, in his Response Brief, Mr. Vojislav Šešelj submits that “this is his final communication with the ICTY and that he does not further intend to participate in any way in proceedings before the ICTY”, that he “will never return to The Hague Tribunal voluntarily”, and that he “is taking the opportunity in his last submission to the ICTY to inform the Appeals Chamber that he has no intention of coming to The Hague even for the rendering of the Appeal Judgement”;<sup>4</sup>

**CONSIDERING** that Šešelj has the right to be present at the upcoming hearing and that his presence is required;<sup>5</sup>

**CONSIDERING** that Šešelj may waive his right to appear before the Appeals Chamber only if his interests are represented by counsel;<sup>6</sup>

<sup>1</sup> Prosecution’s Notice of Appeal, 2 May 2016; Prosecution Appeal Brief, 18 July 2016 (confidential with confidential annex) (a public redacted version was filed on 29 August 2016); Corrigendum to Prosecution Appeal Brief, 29 August 2016 (confidential with confidential annex).

<sup>2</sup> *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Judgement, 14 June 2016 (original French version filed on 31 March 2016). See also *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Judgement, Individual Statement of Judge Mandiaye Niang, 14 June 2016 (original French version filed on 31 March 2016); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Concurring Opinion of Presiding Judge Jean-Claude Antonetti Attached to the Judgement, 16 September 2016 (original French version filed on 31 March 2016); *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Partially Dissenting Opinion of Judge Flavia Lattanzi – Amended Version, 1 July 2016 (original French version filed on 12 April 2016).

<sup>3</sup> Profes[s]or Vojislav [Š]ešelj’s Respondent’s Brief, received on 19 December 2016 and filed on 7 February 2017 (“Response Brief”); Prosecution Reply Brief, 22 February 2017.

<sup>4</sup> Response Brief, paras. 410-412.

<sup>5</sup> See Article 19(4)(d) of the Statute. See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, Judgement, 16 May 2008 (original French version filed on 28 November 2007), paras. 96, 109 (“*Nahimana et al. Appeal Judgement*”).

<sup>6</sup> See Rules 98 and 131 of the Rules.

**CONSIDERING** that Šešelj has elected to represent himself and that he has the right to self-representation at the appeal stage;<sup>7</sup>

**CONSIDERING** that Šešelj's statements in his Response Brief clearly indicate his intention not to attend the upcoming appeal hearing and that this would have a disruptive impact on the proceedings;

**CONSIDERING** that, in view of Šešelj's current position not to appear at the appeal hearing, the Appeals Chamber must take appropriate measures to ensure that his interests are represented at the upcoming appeal hearing in order to ensure the fair and expeditious conduct of the proceedings;

**CONSIDERING** that, prior to restricting Šešelj's right to self-representation, the Appeals Chamber must issue a warning that is specific in nature;<sup>8</sup>

**CONSIDERING** that, if Šešelj maintains his intention not to attend the appeal hearing, it will be in the interests of justice to instruct the Registrar pursuant to Rules 46 and 131 of the Rules to assign a standby counsel to represent Šešelj's interests in the event that Šešelj is not present at the appeal hearing;<sup>9</sup>

**CONSIDERING** that any restrictions on Šešelj's right to represent himself must be limited to the minimum extent necessary to protect the Mechanism's interest in a reasonably expeditious resolution of the appeal before it;<sup>10</sup>

**CONSIDERING**, therefore, that, in order to preserve Šešelj's right to self-representation, the mandate of the standby counsel shall be strictly limited to ensuring that Šešelj's procedural rights at the hearing are protected if he does not attend, and shall not extend to making a response on Šešelj's behalf on the substance of the Prosecution's appeal;

**CONSIDERING** that, if Šešelj does not attend the hearing, he will be given an opportunity to respond in writing to the oral arguments of the Prosecution within 10 days of the receipt of the B/C/S version of the transcripts of the hearing and that the Prosecution will have an opportunity to reply within five days of the receipt of an English translation of Šešelj's written response, if any;

<sup>7</sup> *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Momčilo Krajišnik's Request to Self-Represent, on Counsel's Motions in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007, 11 May 2007, paras. 10-12.

<sup>8</sup> *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 ("Šešelj Appeal Decision"), paras. 22-25.

<sup>9</sup> See *Nahimana et al.* Appeal Judgement, para. 109.

<sup>10</sup> See *Slobodan Milošević v. 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, paras. 17, 19.

**CONSIDERING** that Šešelj should be given an opportunity to reconsider his position not to attend the appeal hearing prior to instructing the Registrar to assign standby counsel;<sup>11</sup>

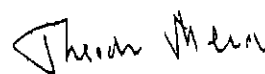
**CONSIDERING** that, if Šešelj is unable to travel to The Hague for the hearing, he may request, pursuant to Rule 96 of the Rules, to participate therein by way of video-conference link;

**HEREBY WARNS** Šešelj that, if he maintains his position not to attend the appeal hearing, the Registrar will be instructed to assign a standby counsel; and

**INVITES** Šešelj to clarify his position on attending the appeal hearing in view of the foregoing within 10 days of the receipt of the B/C/S version of this order.

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

Done this 18th day of September 2017,  
At The Hague,  
The Netherlands



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Judge Theodor Meron, Presiding

[Seal of the Mechanism]

<sup>11</sup> Šešelj Appeal Decision, paras. 24, 25.



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