

IT-03-67-R77.3
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Outcome 2011

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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-R77.3

Date: 1 June 2011

Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Presiding
Judge Burton Hall
Judge Howard Morrison

Registrar: Mr. John Hocking

Decision: 1 June 2011

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON REQUEST FOR THE SAFE TRANSFER OF
DEFENCE WITNESS ZORAN DRAŽILOVIĆ**

Amicus Curiae Prosecutor:
Mr. Bruce MacFarlane, Q.C.

The Accused
Vojislav Šešelj

THIS TRIAL 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”);

BEING SEISED of “Request for the Transfer of Defence Witness Zoran Dražilović in Case No. IT-03-67-R77.3 in Accordance with the Laws of the Kingdom of the Netherlands where the Statute of the ICTY is Applied”, which was submitted by Vojislav Šešelj (“Accused”) and was filed on 26 May 2011 (“Motion”);

NOTING that, in the Motion, the Accused requests that the Chamber “ensure the safe transfer” of Zoran Dražilović from the Republic of Serbia to the Kingdom of the Netherlands during the period between 29 May 2011 and 8 June 2011, or around these dates, as he is scheduled to travel to the seat of the Tribunal to testify in these proceedings on 6 June 2011;¹

NOTING the confidential “Decision on Motion for Issuance of Safe Conduct Order for Witness Zoran Dražilović” issued by Trial Chamber III on 3 March 2008;²

CONSIDERING that Article 29 of the Statute of the Tribunal (“Statute”) regulates co-operation and judicial assistance between the Tribunal and States, including “the taking of testimony and the production of evidence”;

CONSIDERING that Article 30(4) of the Statute provides that “persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the Tribunal”;

CONSIDERING that Rule 54 of the Rules of Procedure and Evidence of the Tribunal (“Rules”) grants a Chamber the authority to issue such orders “as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial”;

CONSIDERING that international law permits the protection of witnesses appearing before judicial authorities of a state other than their state of residence from prosecution, detention, or any other restriction of liberty in respect of acts committed or convictions entered prior to their departure from their state of residence to the state where they are supposed to testify;³

¹ Motion, para. 1.

² *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Motion for Issuance of Safe Conduct Order for Witness Zoran Dražilović, confidential, 3 March 2008.

³ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the on the Giving of Evidence by Video-Link, 25 June 1996, paras. 8–16; *Model Treaty on Mutual Assistance in Criminal Matters*, adopted by the General Assembly on 14 December 1990 (A/RES/45/117),

CONSIDERING the Chamber's view that, under the present circumstances, it is in the interest of justice that Zoran Dražilović be granted safe conduct to travel to The Hague for the purposes of his testimony before the Tribunal in these proceedings;

PURSUANT TO Rule 54 of the Rules;

HEREBY GRANTS the Motion, and:

1) **ORDERS:**

- i. Safe conduct for Zoran Dražilović such that, while in or travelling to The Netherlands from 1 June 2011 to 8 June 2011, or around these dates, and while returning to Serbia thereafter, he shall not be arrested, detained, prosecuted, or subjected to any other restriction, whether physical or legal, of his personal liberty, in respect of alleged acts or convictions prior to his departure from Serbia.
- ii. The safe conduct order shall apply prior to his departure from Serbia to the Netherlands, during his transit between Serbia and The Netherlands, upon his arrival at, and during his entire stay in, The Netherlands, during return transit to Serbia.
- iii. The Chamber may vary or extend the dates for which the order for safe conduct is valid in light of any change in the current witness schedule.

Art. 15; *European Convention on Mutual Assistance in Criminal Matters* (Strasbourg, 20 April 1959, ETS No. 30), Art. 12(1); *Inter-American Convention on Mutual Assistance in Criminal Matters* (Nassau, 23 May 1992), Art. 22; *United Nations Convention against Transnational Organized Crime*, adopted by the General Assembly on 15 November 2000 (A/RES/55/25), Art. 18(27). This practice is also reflected in Articles XVIII and XXIII of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia since 1991, 27 May 1994.

- 2) **REQUESTS** the Registrar of the Tribunal to take all necessary measures for the implementation of the present Decision.

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



Judge Burton Hall

Dated this 1st day of June 2011
At The Hague
The Netherlands

[Seal of the Tribunal]