

**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-PT
Date: 20 April 2007
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President
Registrar: Mr. Hans Holthuis
Decision of: 20 April 2007

THE PROSECUTOR

v

VOJISLAV ŠEŠELJ

**DECISION ON APPEAL AGAINST
DECISION OF THE REGISTRAR OF 24 JANUARY 2007**

Counsel for the Prosecutor:

Mr. Daniel Saxon
Mr. Ulrich Müssemer
Ms. Melissa Pack
Ms. Joanne Motoike

The Accused:

Mr. Vojislav Šešelj

1. On 1 February 2007, Vojislav Šešelj (“Šešelj”) filed before me his “Appeal of Professor Vojislav Šešelj Against the Decision of the Registrar of 24 January 2007” (“Appeal”).¹ In his Appeal, Šešelj requests that I annul the Registrar’s Decision of 24 January 2007 with respect to the language and form of disclosure of materials provided to him by the Prosecution (“Impugned Decision”),² and lift the confidentiality of the Impugned Decision.³ The Registrar filed a confidential submission in response to the Appeal on 8 March 2007 pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”).⁴

Submissions

2. In his Appeal, Šešelj contests the confidentiality of the Impugned Decision. He argues that because it does not contain protected information with respect to victims or witnesses; State interests; any other case before the International Tribunal; or any matter which must not be disclosed to the public, there is no legal basis for its confidential status under the Statute or Rules of the International Tribunal. He further argues that “[t]he question of the form of disclosure is directly linked with the right of the accused to be informed about all aspects of the charges in a language he understands—which, in the proceedings against Professor Vojislav Šešelj, is the Serbian language—and in hardcopy format.”⁵ He therefore submits that, “[i]n general, information concerning the form of disclosure and manner of correspondence in the proceedings before the ICTY may not be secret.”⁶

3. Šešelj also contests the lawfulness of the Impugned Decision itself, in particular, the following statements from the Registrar:

I refer to my letter of 8 December 2006 in which I stated that “[a]ll documents to be delivered to you by the Court or the Prosecution on the basis of the Rules of Procedure and Evidence will be delivered to you in full, in Serbian, and in hardcopy.” It is necessary to clarify this statement at present because I do not have authority to speak for the Prosecutor. While I stand by my statement as it applies to all matters within my authority, the Prosecution is bound only by orders of the court. Accordingly, the attached material, disclosed to you by the Prosecutor under the Tribunal’s Rules of Procedure and Evidence, may not meet the conditions promised in my earlier communication. Any concerns or complaints you may have about how the Prosecutor is fulfilling her obligations under the Rules can be

¹ Translation of the Appeal was filed on 13 February 2007.

² Confidential Decision from the Registrar, 24 January 2007.

³ Appeal, pp. 3, 6-7.

⁴ Submission of the Registrar on “Appeal by Professor Vojislav Šešelj Against the Decision of the Registrar of 24 January 2007”, confidentially filed on 8 March 2007 (“Response”). In his Response, the Registrar states that he does not seek to maintain the confidential status of the Impugned Decision. *Id.*, para. 5. On this basis, the present Decision is rendered publicly.

⁵ Appeal, p. 3.

⁶ *Id.*

addressed to the Prosecutor directly and the Chamber. I regret any resulting inconvenience or misunderstanding on this matter.⁷

4. Šešelj contends that throughout the proceedings in his case, most problems have arisen over Prosecution disclosure and, from his point of view, the matter was resolved once and for all in the Registrar's decisions of 7 and 8 December 2006, which were taken in accordance with international human rights standards and Articles 20 and 21 of the Statute of the International Tribunal. He argues that the Registrar did not exceed his authority with respect to the conditions imposed for Prosecution disclosure in those decisions and, even if he did, this should not result in prejudice to him or in a violation of his rights.⁸ He contends that the obligation to provide an accused person with materials in a language he understands is not a selective obligation but applies to all materials irrespective of whether they originate from a Chamber or the Prosecution. Thus, the Impugned Decision is unlawful because "it restricts the guaranteed rights of Professor Vojislav Šešelj on the grounds of potential disagreements and ambiguities in communication between the Registry" and the Prosecution and, furthermore, goes against the principle of equality of the parties to the proceedings.⁹

Discussion

5. As in previous submissions filed by Šešelj before me, I note that Šešelj has failed to cite to any provision in the Statute or the Rules of the International Tribunal as a basis for bringing this Appeal. I have previously warned that if Šešelj continues to file appeals against the Registrar's decisions without demonstrating any legal basis establishing my competence for review, I will simply dismiss such appeals without further consideration.¹⁰ Furthermore, I note that the Impugned Decision was rendered by the Registrar out of compliance with the "Decision on Form of Disclosure" rendered by Trial Chamber I on 4 July 2006 and thus, in effect, Šešelj's Appeal is the same as his appeal filed against that Decision, which he properly brought before the Appeals Chamber on the same day that he filed this Appeal.¹¹ Under the Rules of the International Tribunal, only the Appeals Chamber is competent to consider an appeal against such a Trial Chamber decision.¹² The Appeals Chamber recently disposed of Šešelj's appeal upholding the Decision on Form of Disclosure while stating that "this does not prevent Mr.

⁷ *Id.*, p. 2.

⁸ *Id.*, pp. 5-6.

⁹ *Id.*, p. 6.

¹⁰ Decision on Appeal Against Registry Decision of 16 January 2007, 5 March 2007, para. 6.

¹¹ On 1 February 2007, Šešelj confidentially filed his "Interlocutory Appeal by Professor Vojislav Šešelj Against the Decision on Form of Disclosure Issued by Trial Chamber I on 4 July 2006".

Šešelj from applying for a modification [. . .] to the newly assigned Trial Chamber, which might consider, in its discretion, a different trial management approach” than that followed in the Decision on Form of Disclosure.¹³ Thus, only the Trial Chamber presently seized of Šešelj case is competent to deal with the matters raised in Šešelj’s Appeal.

6. On the basis of the foregoing, Šešelj’s Appeal is **DENIED**.

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

Done this 20th day of April 2007,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]

¹² See Rule 72(B) and (C) of the Rules.

¹³ Decision on Vojislav Šešelj’s Interlocutory Appeal Against the Trial Chamber’s Decision on Form of Disclosure, 17 April 2007, para. 20.