

**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: 25 April 2007
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Fausto Pocar, President
Registrar: Mr. Hans Holthuis
Decision of: 25 April 2007

THE PROSECUTOR

v

VOJISLAV ŠEŠELJ

**DECISION ON APPEALS AGAINST
DECISIONS OF THE REGISTRAR OF
4 JANUARY 2007 AND 9 FEBRUARY 2007**

Counsel for the Prosecutor:

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

The Accused:

Mr. Vojislav Šešelj

1. On 19 February 2007 and 2 March 2007, Vojislav Šešelj (“Šešelj”) filed before me two Appeals¹ in which he requests that I annul the Registrar’s Decision of 4 January 2007 and Decision of 9 February 2007, order the Registrar to admit his statements of fees for 2003-2006 amounting to US\$ 6,395,000 and approve the use of the United Nations’ financial resources for the costs of his self-representation, “which he incurred through the engagement of his Expert Team.” Šešelj claims that the invoices submitted are equivalent to sums paid to other defence counsel “in equally or similarly complex and compound cases.”² The Registrar filed his submission in Response to Šešelj’s Appeals on 9 March 2007 pursuant to Rule 33(B) of the Rules of Procedure and Evidence of the International Tribunal (“Rules”). Both of Šešelj’s Appeals contest Decisions of the Registrar on requests for payment of fees incurred by his Expert Team of legal advisers, and both Appeals seek the same relief. As such, I consider them together in the present Decision.

Submissions

A. Appeal of 19 February 2007

2. In his Appeal of 19 February 2007, Šešelj contests the Registrar’s Decision of 4 January 2007, in which he claims the Registrar unlawfully denied his Statement of Fees for 2003, 2004 and 2005 incurred by his Expert Team on the basis that his eligibility for legal aid is conditioned upon the assignment of counsel, which he has failed to request. Šešelj also contests the Registrar’s statement that, if it is determined that the Registrar has authority to disburse legal aid funds to a self-represented accused and the case is ranked at the highest level of complexity, the most that could be allocated under the current pre-trial payment scheme would be 382,897 Euros.³

¹ Appeal by Professor Vojislav Šešelj Against the Decision of the Registrar of 28 December 2006, 9 January 2007, translation filed on 19 February 2007 (“Appeal of 19 February 2007”); Appeal of Professor Vojislav Šešelj Against the Decision of the Registrar of 9 February 2007, 22 February 2007, translation filed on 2 March 2007 (“Appeal of 2 March 2007”) (collectively “Appeals”). Although Šešelj’s Appeal of 19 February 2007 is entitled as being against the Registrar’s Decision of 28 December 2006, Šešelj states that he received said Decision on 4 January 2007. *See* Appeal of 19 February 2007, p. 1. In his response, the Registrar states that he did not issue a decision on 28 December 2006, and that Šešelj’s Appeal of 19 February 2007 refers in substance to the Registrar’s Decision of 4 January 2007. *See* Registry Submission Regarding Vojislav Šešelj’s Appeals Against the Registrar’s Decisions of 28 December 2006 and 9 February 2007 (“Response”), fn. 1. Therefore, this Decision refers to the impugned decision in Šešelj’s Appeal of 19 February 2007 as the Registrar’s Decision of 4 January 2007.

² Appeal of 2 March 2007, p. 9. *See also* Appeal of 19 February 2007, p. 10.

³ Appeal of 19 February 2007, p. 2.

3. Šešelj submits that there are several bases for his contention that the Decision of 4 January 2007 is unlawful. First, it contravenes Article 20(1) of the Statute of the International Tribunal, which guarantees the right to a fair trial and covers the principle of equality of arms. Šešelj argues that he does not request financial equality with the Prosecution or even a greater amount than that already approved from United Nations funds in order to achieve equality with the Prosecution; rather, he contests the downright denial of any United Nations funds to him as a self-represented accused, while those same financial resources are at the Prosecution's disposal.⁴

4. Second, Šešelj argues that the Registrar's interpretation of Article 21(4) of the Statute of the International Tribunal is "blatantly erroneous" because he links United Nations legal aid funds with counsel assigned to an indigent accused.⁵ In Šešelj's view, the emphasis in the Statute is on building a proper defence and the accused's ability to pay, not on the assignment of counsel. He argues that legal aid under the Statute cannot only be in the form of assigned counsel and ought to be viewed in the context of the principles of equality of the parties and equality of arms. If assigned counsel was the only basis for use of legal aid funds, then a self-represented accused in detention without sufficient resources to pay for his defence would be in an unequal position with the Prosecution as well as other accused who have assigned counsel.⁶ Šešelj further contends that the Registrar fails to apply Rule 2 of the Rules, which defines "Defence" as "the accused, and/or the accused's counsel" to his interpretation of the Statute.⁷ Since Article 21(4)(d) guarantees funding for the costs of the defence if an accused does not have the means to pay for it, this must include a self-represented accused within the meaning of Rule 2 of the Rules and not only assigned counsel.⁸ Šešelj concludes his first and second arguments by submitting that, while the Registrar cites to provisions of the Rules and other basic documents of the International Tribunal in support of his approach in his Decision of 4 January 2007, they are inapplicable to the question of the rights of an accused, including the right of a self-represented accused to have his defence funded by the United Nations, which is solely governed by the Statute of the International Tribunal and must be upheld.⁹

5. Third, Šešelj argues that the Registrar's Decision of 4 January 2007 contradicts the Registrar's previous decisions of 7 and 19 December 2006 to assume certain reasonable costs

⁴ *Id.*, pp. 2-3.

⁵ *Id.*, pp.

⁶ *Id.*, pp. 4-5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*, p. 5.

associated with Šešelj's defence without also requiring him to request assignment of counsel. Šešelj states that the Registrar's assumption of these reasonable costs indicates that he is aware that Šešelj does not have sufficient means to pay for the assistance provided to him by others in the preparation of his defence while in detention. Furthermore, Šešelj argues that the Registrar's decisions of 7 and 19 December 2006, when compared to his Decision of 4 January 2007, demonstrate that the Registrar improperly considers that it is a matter of his discretion alone whether or not a self-represented accused is entitled to the United Nations' financial resources, a discretion that is not conferred on him either under the Statute or the Rules of the International Tribunal.¹⁰ Finally, Šešelj submits that the Registrar's denial of legal aid to him on the basis of his failure to request assignment of counsel contravenes the Decisions of the Appeals Chamber of 20 October 2006 and 8 December 2006, wherein his right to self-representation was reinstated and confirmed.¹¹

6. Šešelj also submits that the Decision of 4 January 2007 is arbitrary in that the Registrar stated that if he was authorized to allocate legal aid to an indigent, self-represented accused, he could only provide a hypothetical maximum amount for the pre-trial proceedings in Šešelj's case. Šešelj contends that his case is complex and multifaceted, involving locations in Croatia, Bosnia and Herzegovina and Serbia, and "[d]etails concerning the costs of pre-trial phases in comparably compound and complex cases before the ICTY have not been divulged to Professor Vojislav Šešelj" prior to the Registrar reaching his conclusion on the estimated amount of legal aid that might be provided to him.¹² In addition, Šešelj states that he has not received information with respect to costs incurred by the Prosecution in the case against him as paid by the United Nations.¹³ Furthermore, he notes that as of 24 February 2003, his trusted Expert Team has been assisting him in conducting his defence while he has been detained and has drafted in excess of 220 requests and submissions directed to the President, Appeals Chamber and Registry of the International Tribunal.¹⁴ He argues that, in fact, the Appeals Chamber's Decision of 8 December 2006 reinstated his right to self-representation, which he has exercised since the commencement of the proceedings in his case on 24 February 2003; thus, the Registrar should provide for costs incurred since then and not only from December 2006.¹⁵ He argues that if he is not able to reimburse his Expert Team for their quality assistance to him over the past four years, "his self-

¹⁰ *Id.*, pp. 6-7.

¹¹ *Id.*, p. 7.

¹² *Id.*, p. 8.

¹³ *Id.*

¹⁴ *Id.*, pp. 5, 9.

¹⁵ *Id.*, p. 9.

representation will be reduced to mere form, that is, only formal self-representation without material self-representation.”¹⁶

B. Appeal of 2 March 2007

7. In his Appeal of 2 March 2007, Šešelj contests the Registrar’s Decision of 9 February 2007 in which the Registrar again denied Šešelj’s claim for reimbursement for fees and expenses incurred by his Expert Team from 2003-2005 and further denied his claim for reimbursement for such costs and fees incurred in 2006. Šešelj claims that this Decision is unlawful for all of the reasons previously provided in his Appeal of 19 February 2007.¹⁷ In addition, Šešelj provides four further bases for his allegation that the Decision of 9 February 2007 is unlawful.

8. First, Šešelj contests the Registrar’s statement that entitlement to legal aid from the Tribunal depends on the financial situation of an accused, and legal aid may only be disbursed through assignment of counsel. He claims that whether an accused may exercise his entitlement to legal assistance depends only on whether he decides to “empower another to perform specific legal work on his behalf and for his interests” and does not depend on the financial situation of an accused, otherwise, “a rich person could probably never sign a power of attorney.”¹⁸ He also argues that the assertion that disbursement of legal aid may only be made through appointment of counsel is erroneous because it is an accused who chooses counsel whether privately appointed or assigned.¹⁹

9. Second, Šešelj challenges the Registrar’s statement that his offer to cover certain reasonable and necessary costs for Šešelj’s defence in the exercise of his right to self-representation does not mean that he is entitled to legal aid. Šešelj argues that this statement demonstrates that the Registrar has a narrow appreciation of the notion of legal assistance as only being available to an accused through counsel forcibly imposed on him. He states that this view of legal aid is essentially a mask for denying access to United Nations funds by self-represented accused.²⁰

¹⁶ *Id.*, p. 7.

¹⁷ Appeal of 2 March 2007, pp. 2-3.

¹⁸ *Id.*, pp. 4-5.

¹⁹ *Id.*, p. 5.

²⁰ *Id.*, pp. 5-6.

10. Third, Šešelj argues that the Registrar's claim that the International Tribunal will only reimburse "necessary and reasonable" costs incurred by him in preparing his defence fails to address how the reasonableness and necessity of costs is determined. He claims that in making such a determination, under the principle of equality of arms, the Prosecution's costs should be similarly assessed, especially in light of the fact that the Prosecution may use its material from other cases while he has to invest greater efforts in rebutting the Prosecution's allegations. Šešelj also argues that because his defence depends exclusively on him, he is the only one capable of making the appropriate determination. Furthermore, the Registry should not be privy to the tactics Šešelj intends to employ against the Prosecution by being able to assess whether the costs for his defence are reasonable and necessary and thereby give "the Prosecution an even greater advantage in relation to the defence."²¹

11. Finally, Šešelj contests the Registrar's statement that any reimbursement of costs to him requires prior approval by the Registry, and Šešelj failed to seek such prior authorization for any of the work done by his Expert Team. Šešelj states that the Registry was informed from the outset of his case that the Expert Team was assisting him in the preparation of his defence and, while it would not register the members of that team, it did admit all of the submissions and materials drafted by them. He argues that in light of the Appeals Chamber's Decisions of 20 October and 8 December 2006, it is unbelievable that the Registrar would claim that he had to seek approval of the Registry for the work of his Expert Team in helping him conduct his own defence. He submits that "the costs of engagement of the Expert Team are in every way the costs of mounting a defence and must be paid for using funds of the United Nations."²²

Discussion

12. The first issue to be determined in disposing of Šešelj's Appeals is whether I am competent to review the Decisions of the Registrar he is contesting therein. While Šešelj correctly notes that I have a general power to supervise the administrative activities of the Registrar pursuant to Rule 19 of the Rules,²³ including where they may impinge upon the rights of an accused before the International Tribunal,²⁴ I may not exercise it where the power of

²¹ *Id.*, pp. 6-7.

²² *Id.*, pp. 7-8.

²³ Appeal of 19 February 2007, p. 10; Appeal of 2 March 2007, p. 9.

²⁴ Decision on Appeal Against Registry Decision of 19 December 2006, 12 March 2007 ("Decision of 12 March 2007"), para. 6 & fn. 16.

review has been specifically conferred elsewhere.²⁵ I note that the primary basis for Šešelj's Appeals is that the Decision of 24 January 2007 and Decision of 9 February 2007, by denying legal aid to him for purposes of reimbursing his Expert Team, violate his right to a fair trial, the principle of equality of arms and his right to self-representation as guaranteed by the Statute of the International Tribunal. Under Article 20(1) of the Statute, the Chamber seized of a case has the express obligation to ensure the fairness of the proceedings before it and thus, it is appropriate for that Chamber to review decisions of the Registrar alleged to directly impact upon an accused's right to a fair trial, unless the power of review is specifically conferred on me elsewhere.²⁶ Such is not the case here. In addition, as I have previously noted, "issues relating to an accused's exercise of the right to self-representation under the Statute of the International Tribunal are expressly for a Chamber to decide in light of its inherent power and duty to ensure the fair and expeditious management of its proceedings. Furthermore, review of a decision by the Registrar on allocation of funds in terms of its impact upon the right of an accused to 'equality of arms' with the Prosecution lies with the relevant Chamber."²⁷ Therefore, only the Trial Chamber presently seized with Šešelj's case may consider the issues raised in his Appeals with respect to the Registrar's Decision of 24 January 2007 and Decision of 9 February 2007.

13. On the basis of the foregoing, Šešelj's Appeals are **DENIED**.

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

Done this 25th day of April 2007,
At The Hague,
The Netherlands.


Judge Fausto Pocar
President

[Seal of the International Tribunal]

²⁵ *Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on "Motion Seeking Review of the Decisions of the Registry in Relation to Assignment of Counsel", 29 January 2007 ("*Krajišnik Decision*"), para. 9 citing *Prosecutor v. Blagojević*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojević to Replace His Defence Team, 7 November 2003 ("*Blagojević Decision*"), para. 7.

²⁶ *Blagojević Decision*, para. 7 & fn. 23.

²⁷ See Decision of 12 March 2007 at para. 6 citing *Krajišnik Decision*, fn. 11; *Prosecutor v. Šešelj*, Case No. IT-03-67-AR73.3, Decision on Appeal Against the Trial Chamber's Decision on Assignment of Counsel, 20 October 2006, para. 16; *Blagojević Decision*, para. 7; *Prosecutor v. Milutinović et al.*, Case No. IT-99-37-AR73.2, Decision on Interlocutory Appeal on Motion for Additional Funds, 13 November 2003, paras. 23-24.