



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: 17 December 2008
Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Registrar: Mr. Hans Holthuis

Decision of: 17 December 2008

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON URGENT REGISTRY SUBMISSION PURSUANT TO RULE 33(B)
SEEKING DIRECTION FROM THE PRESIDENT ON THE TRIAL CHAMBER'S
DECISION OF 27 NOVEMBER 2008**

Office of the Prosecutor

Mr. Daryl Mundis
Ms. Christine Dahl

The Accused

Vojislav Šešelj

1. On 1 December 2008, the Registry filed before me the “Urgent Registry Submission Pursuant to Rule 33(B) Seeking Direction From the President Regarding the Trial Chamber’s Decision of 27 November 2008” (“Submission of 1 December 2008”). This Submission concerns the “Decision on Monitoring the Privileged Communications of the Accused with Dissenting Opinion by Judge Harhoff in Annex” issued confidentially by Trial Chamber III (“Trial Chamber”) on 27 November 2008 (“Impugned Decision”).¹

I. BACKGROUND

2. In a letter dated 29 September 2008, the Registrar informed Vojislav Šešelj (“Šešelj”) of the Registrar’s decision to monitor Šešelj’s privileged communications (“Decision of 29 September 2008”) pursuant to Rule 65(B) of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (“Rules of Detention”).² In that Decision, the Registrar found that there were reasonable grounds to believe that Šešelj’s privileged communication line was being used for communication with persons other than those who had been granted privileged communications, for matters other than the preparation of Šešelj’s Defence, and possibly to facilitate interference with or intimidation of witnesses.³ In a letter dated 29 October 2008, the Registrar informed the Accused of his decision to extend the monitoring of his privileged communications for 30 days on the ground that there had been no substantial change in the circumstances underlying the Decision of 29 September 2008 (“Decision of 29 October 2008”).⁴ Thereafter, in the Submission of 4 November 2008, the Registrar informed the Trial Chamber that the monitoring of Šešelj’s privileged communications would continue “at least until the matters raised in various submissions pending before the Trial Chamber are resolved” (“Decision of 4 November 2008”).⁵

3. At the 22 October 2008 hearing, Šešelj raised a complaint to the Trial Chamber with regard to the Decision of 29 September 2008, and the Presiding Judge concluded that the Trial Chamber had to rule on the Accused’s request.⁶ In the Submission of 4 November 2008, the Registrar

¹ A public redacted version of the Impugned Decision was issued on 1 December 2008 and filed on 9 December 2008.

² Impugned Decision, para. 2.

³ *Prosecutor v. Vojislav Šešelj, Public with Public and Confidential Ex Parte Annexes Registry Submission Pursuant to Rule 33(B) Regarding the Monitoring of Vojislav Šešelj’s Communications*, 4 November 2008 (“Submission of 4 November 2008”), paras 4-8.

⁴ Impugned Decision, para. 4.

⁵ Submission of 4 November 2008, para. 41. The Decisions of 29 September, 29 October, and 4 November 2008 will hereinafter be referred to collectively as “Registrar’s Decisions.”

⁶ *Prosecutor v. Vojislav Šešelj*, Case No. IT-07-67-T, T.10977, 22 October 2008. See also Submission of 4 November 2008, para. 3.

argued that the Trial Chamber lacked jurisdiction to review the Decision of 29 September 2008 on the ground that such power is specifically conferred on the President.⁷

4. In the Impugned Decision, the Trial Chamber found, Judge Harhoff dissenting, that although the Chamber may not reverse the Registrar's Decisions to monitor Šešelj's privileged communications, it does have jurisdiction to review whether those decisions have the effect of infringing on the Accused's right to a fair trial as ensured by the Trial Chamber under Article 20(1) of the Statute of the International Criminal Tribunal for the former Yugoslavia ("Statute of the International Tribunal").⁸

II. DISCUSSION

5. The Registrar argues that the Trial Chamber's finding that it had jurisdiction to review the Decision of 29 September 2008 is contrary to the plain language of Rule 65(B) of the Rules of Detention and the existing jurisprudence of the Tribunal.⁹ The Registrar accordingly submits that the Accused should have directed his appeal to the President as the only competent body to review the Decision of 29 September 2008.¹⁰ He contends that "where the power to review a specific matter is explicitly conferred on another organ of the Tribunal, the primary competence to do so lays with that organ" and that the Trial Chamber can only intervene to ensure the protection of the Accused's fair trial rights after the exhaustion of the available remedies.¹¹

6. The Registrar also claims that the Impugned Decision suggests that the President and the Trial Chamber may have concurrent jurisdiction to review a decision of the Registrar and argues that such concurrent jurisdiction would contravene the principle of legal certainty and could hamper the judicial process.¹² By the same token, he considers that a departure by the Trial Chamber from the Appeals Chamber's jurisprudence affects the principle of judicial certainty.¹³

7. The Registrar further submits that in order to address the concerns expressed in the Impugned Decision, he filed a separate submission on 1 December 2008 before the Trial Chamber

⁷ Submission of 4 November 2008, paras 4-8.

⁸ Impugned Decision, paras 20-21.

⁹ Submission of 1 December 2008, paras 10-14, referring to *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.

¹⁰ Submission of 1 December 2008, para. 14.

¹¹ Submission of 1 December 2008, para. 18.

¹² Submission of 1 December 2008, para. 19.

¹³ *Ibid.*, citing *Prosecutor v. Slatko [sic] Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000; *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-T, Judgement, 14 January 2000, para. 540.

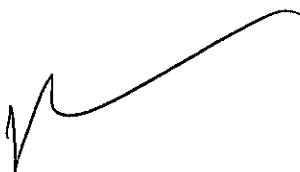
and that he now seeks direction from the President regarding the discharge of his duties in light of the present circumstances.¹⁴

8. In the Impugned Decision, the Trial Chamber recognized that I have the power to review and reverse the decisions of the Registrar pursuant to Rule 65(B) of the Rules of Detention.¹⁵ The Registrar also recognizes that the Trial Chamber may intervene if the issue affects the Accused's fair trial's rights, such as in the present case, but only after the remedies available under relevant provisions, such as Rule 65(B) of the Rules of Detention, have been exhausted.¹⁶

9. While I clearly have the authority to issue decisions that bind the Registrar in accordance with my power to supervise the activities of the Registry pursuant to Rule 19(A) of the Rules of Procedure and Evidence and other specific Tribunal regulations, such as Rule 65(B) of the Rules of Detention, as President, I have no authority to issue decisions that bind a Trial Chamber. This is a power that is exclusively conferred upon the Appeals Chamber pursuant to Article 25 of the Statute of the International Tribunal.¹⁷ The only avenue to challenge the Impugned Decision is therefore through the filing of an appeal before the Appeals Chamber. For this reason, I hereby decline to address the question of whether the Trial Chamber lacked jurisdiction to review the Decision of 29 September 2008.

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

Done this 17th day of December 2008,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

[Seal of the International Tribunal]

¹⁴ Submission of 1 December 2008, paras 20-21.

¹⁵ Impugned Decision, para. 21.

¹⁶ Submission of 1 December 2008, para. 18.

¹⁷ *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Judgement, 24 March 2000, para. 113.