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Case No. IT-03-67-PT
Prosecutor v. Vojislav Šešelj

17-03-67-PT
D15052 - D15050
30 OCTOBER 2006

DECISION**THE DEPUTY REGISTRAR,**

NOTING the Statute of the Tribunal as adopted by the Security Council under Resolution 827 (1993), and in particular Article 21 thereof;

NOTING the Rules of Procedure and Evidence as adopted by the Tribunal on 11 February 1994, as subsequently amended, and in particular Rules 44 and 45 thereof;

NOTING the Directive on the Assignment of Defence Counsel as adopted by the Tribunal on 28 July 1994, as subsequently amended ("Directive");

NOTING the Code of Professional Conduct for Counsel Appearing Before the International Tribunal (IT/125 REV.2) ("Code of Conduct");

NOTING that Mr Vojislav Šešelj ("Accused") surrendered to the Tribunal on 23 February 2003, and that in correspondence dated 25 February 2003 and addressed to the Registry, the Accused expressed his intention to represent himself before the Tribunal, which he reiterated during his initial appearance on 26 February 2003;

NOTING that on 9 May 2003, the Trial Chamber issued its "Decision on Prosecutor's Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence", in which it, *inter alia*, decided "that standby counsel [...] shall be assigned to the Accused" and ordered the "Registry to assign one standby counsel from the list of counsel kept by the Registrar under Rule 45(B)";

NOTING that on 5 September 2003, the Registrar assigned Mr Aleksandar Lazarević, attorney at law from Belgrade, as standby counsel to the Accused;

NOTING that on 16 February 2004, the Registrar withdrew Mr Lazarević's assignment as standby counsel to the Accused, and assigned Mr Tjarda van der Spoel in that capacity;

NOTING that on 22 May 2006, the Office of the Prosecutor filed the "Prosecution's Second Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence with Confidential Annexes";

CONSIDERING that on 21 August 2006, the Trial Chamber issued its “Decision on Assignment of Counsel” (“21 August 2006 Decision”), in which it, *inter alia*:

1. Requested that “the Registry make the necessary arrangements for assigning, as soon as practicable, Counsel for the Accused”;
2. Instructed “current Standby Counsel to represent the Accused until the Registry has assigned Counsel to the Accused”; and
3. Ordered “that the Accused’s participation in the proceedings will be through Counsel unless, having heard from Counsel, the Chamber determines otherwise”;

CONSIDERING the Deputy Registrar’s Decision of 30 August 2006 withdrawing Mr van der Spoel’s assignment as standby counsel and assigning Mr David Hooper, Barrister from London, England, as counsel to the Accused, subject to the decision of the Appeals Chamber on the interlocutory appeal of the 21 August 2006 Decision;

CONSIDERING that on 4 September 2006, in his capacity of former standby counsel to the Accused and in accordance with the Deputy Registrar’s Decision of 30 August 2006, Mr van der Spoel filed the “Appeal Against the Trial Chamber’s Decision on Assignment of Counsel”;

CONSIDERING the Deputy Registrar’s Decision of 13 September 2006, assigning Mr Andreas O’Shea, a Barrister from England and Law Professor in South Africa, as Mr Hooper’s co-counsel;

CONSIDERING that on 20 October 2006, the Appeals Chamber issued the “Decision on Appeal Against the Trial Chamber’s Decision on Assignment of Counsel” (“Appeals Chamber’s Decision of 20 October 2006”), which, in relevant parts, reads as follows: “the Impugned Decision [the 21 August 2006 Decision] is reversed in light of absence of a specific warning to Šešelj before assigning him counsel [...] the Appeals Chamber hereby explicitly warns Šešelj that, should his self-representation subsequent to this Decision substantially obstruct the proper and expeditious proceedings in this case, the Trial Chamber will be justified in promptly assigning him counsel after allowing Šešelj the right to be heard with respect to his subsequent behaviour”;

CONSIDERING the 25 October 2006 Trial Chamber’s “Order Concerning Appointment of Standby Counsel and Delayed Commencement of Trial” (“Trial Chamber’s Order of 25 October 2006”), by which the Trial Chamber instructs the Registrar “to appoint standby counsel with necessary support staff, at a level of remuneration and conditions of service to be determined by the Registrar, to perform the following functions in this case:

- a) to assist the Accused in the preparation and presentation of his case during the pre-trial and trial phases whenever so requested by the Accused;
- b) to offer advice or make suggestions to the Accused as standby counsel sees fit, in particular to evidential and procedural issues;
- c) to address the court whenever so requested by the Accused or the Trial Chamber;
- d) to receive copies of all court documents, filings and disclosed materials that are received or sent to the Accused;
- e) to be present in court during proceedings;
- f) to be prepared to take over the conduct of the defence from the Accused and effectively bring the defence case to conclusion;
- g) in the event of abusive conduct by the Accused, and if so ordered by the Trial Chamber, to put questions to witnesses, in particular sensitive or protected witnesses, on behalf of the Accused, without depriving the Accused of his right to control the strategy of the defence case;

- h) to temporarily take over the conduct of the defence from the Accused should the Trial Chamber find, following a warning, that the Accused is engaging in disruptive conduct or conduct requiring his removal from the courtroom under Rule 80(B) of the Tribunal's Rules of Procedure and Evidence;
- i) to permanently take over the conduct of the defence from the Accused should the Trial Chamber find that the Accused's conduct is substantially obstructing the proper and expeditious proceedings, having allowed the Accused the right to be heard with respect of the conduct in question";

CONSIDERING, that Mr Hooper has agreed to act as standby counsel for the Accused in accordance with the Trial Chamber's Order of 25 October 2006;

CONSIDERING, that in correspondence dated 27 October 2006, Mr Hooper requested that, in the event he is assigned as standby counsel, Mr O'Shea be assigned as his co-counsel, providing reasons for this request;

CONSIDERING that trial proceedings in this case are expected to commence shortly, and that standby counsel may be required to temporarily or permanently take over the conduct of the defence from the Accused on short notice;

CONSIDERING, therefore, the need for standby counsel to be fully prepared and able to act whenever called upon by the Accused or the Chamber in order to ensure that proceedings are not disrupted;

CONSIDERING that, in light of this, the Registrar deems it is in the interest of justice to assign a co-counsel to the standby counsel in this case;

CONSIDERING that Mr O'Shea has agreed to be assigned as co-counsel to Mr Hooper;

CONSIDERING that Messrs Hooper and O'Shea are on the Registrar's list of counsel qualified to represent indigent suspects and accused;

DECIDES pursuant to the Appeals Chamber's Decision of 20 October 2006 and the Trial Chamber's Order of 25 October 2006, to withdraw Mr Hooper and Mr O'Shea as counsel and co-counsel, and to assign Mr Hooper as standby counsel and Mr. O'Shea as co-counsel to Mr. Hooper, effective as of the date of this decision.



John Hocking
Deputy Registrar



Dated this 30th day of October 2006,
At The Hague,
The Netherlands.