



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: 6 November 2006
Original: English

BEFORE THE BUREAU OF THE INTERNATIONAL CRIMINAL TRIBUNAL

Before: Judge Fausto Pocar, President
Judge Kevin Parker
Judge Carmel Agius
Judge Mohamed Shahabuddeen
Judge Mehmet Güney

Registrar: Mr. Hans Holthuis

Decision of: 6 November 2006

THE PROSECUTOR

v.

Vojislav ŠEŠELJ

**DECISION ON MOTIONS FOR DISQUALIFICATION OF JUDGE PATRICK
ROBINSON, JUDGE ALPHONS ORIE AND JUDGE BAKONE JUSTICE MOLOTO**

Counsel for the Prosecutor:

Ms. Hildegard Uertz-Retzlaff
Mr. Daniel Saxon
Mr. Ulrich Mussemeyer

The Accused (representing himself):

Mr. Vojislav Šešelj

Standby Counsel:

Mr. David Hooper
Mr. Andreas O'Shea

FM

1. Vojislav Šešelj (“Šešelj”) has filed before the Bureau of the International Tribunal three motions requesting the disqualification of Judges from proceedings against him.¹ On 2 October 2006, he filed a motion requesting that it disqualify and withdraw Judge Alphons Orié from the trial and appeal in his case claiming that, among other things, Judge Orié’s former role as co-counsel in the *Tadić* case and participation in the *Babić* case cause reasonable fear of bias on the part of Judge Orié in his case.² On 2 October 2006, he filed a motion requesting the Bureau to disqualify and withdraw Judge Patrick Robinson from any trial and appeals proceedings in his case claiming that Judge Robinson’s impartiality is impugned by his role as Presiding Judge in the *Milošević* case.³ Finally, on 12 October 2006, Šešelj filed a motion requesting the Bureau to disqualify and withdraw Judge Bakone Justice Moloto from any trial and appeals proceedings in his case on the basis that Judge Moloto’s role as Presiding Judge in the *Martić* case renders him prejudiced in his case.⁴

2. As Bureau members Judge Robinson and Judge Orié are two of the Judges impugned by Šešelj, it has been determined that they are unable to carry out their functions as members of the Bureau pursuant to Rule 23 (E) of the Rules of Evidence and Procedure (“Rules”). Accordingly, in order to determine the motions for disqualification, the Bureau has been reconstituted in accordance with Rule 17 of the Rules with Judges Shahabuddeen and Güney replacing Judges Robinson and Orié.

3. While Šešelj has filed these motions for disqualification before the Bureau, the Bureau has no jurisdiction over the motions filed before it. Rule 15 was amended in July 2005 and that amendment removed the role of the Bureau in determining an application for the disqualification of a Judge, although it should be noted that the Rule never conferred a right on a party to approach the Bureau directly. The relevant part of the amended Rule 15 setting out the procedure to be followed by a party seeking the disqualification of a Judge provides as follows:

(A) A Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.

¹ Pursuant to Rule 23 of the Rules of Procedure and Evidence (“Rules”), the Bureau is composed of the President, the Vice-President and the Presiding Judges of the Trial Chambers.

² Request for the ICTY Bureau to Disqualify and Withdraw Judge Alfons Orié from the Trial and Appeal in the Case Against Dr. Vojislav Šešelj, 2 October 2006, pp. 5-6, 8.

³ Request that the Bureau of the ICTY Disqualify and Withdraw Judge Patrick Robinson from the Trial and Appeals Proceedings in the Case Against Dr Vojislav Šešelj, 2 October 2006, pp. 3, 8.

⁴ Application for the Bureau of the ICTY to Disqualify and Withdraw Judge Bakone Moloto from the Trial and Appeal Proceedings in the case Against Dr. Vojislav Šešelj, 12 October, pp. 4, 8.

(B) (i) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial or appeal upon the above grounds. The Presiding Judge shall confer with the Judge in question and report to the President.

(ii) Following the report of the Presiding Judge, the President shall, if necessary appoint a panel of three Judges drawn from other Chambers to report to him its decision on the merits of the application. If the decision is to uphold the application, the President shall assign another Judge to sit in the place of the Judge in question.

4. Thus, having regard to the provisions now regulating the disqualification procedure, Šešelj's applications are incorrectly addressed to the Bureau.

Disposition

5. On the basis of the foregoing, Šešelj's requests for disqualification and withdrawal of Judges Robinson, Orié and Moloto are **DISMISSED**.

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

Done this 6th day of November 2006,
At The Hague,
The Netherlands.



Judge Fausto Pocar
President

[Seal of the International Tribunal]