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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-T
Date: 27 November 2006
Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orié, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle

Registrar: Mr Hans Holthuis

Decision of: 27 November 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

REASONS FOR DECISION (NO. 2) ON ASSIGNMENT OF COUNSEL

Office of the Prosecutor

Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemeier
Ms Melissa Pack

Counsel for the Accused

Mr David Hooper
Mr Andreas O'Shea

1. On 21 August 2006, the Trial Chamber issued a decision assigning counsel to the Accused, thereby ending the Accused's self-represented status.¹ The Trial Chamber based its decision on the pre-trial conduct of the Accused up until that point, and in particular on obstructionist and disruptive behaviour, deliberate disrespect for the rules, and intimidation of, and slanderous comments about witnesses. The Trial Chamber concluded that continued self-representation may substantially obstruct the proper and expeditious conduct of the trial.²

2. On 20 October 2006, the Appeals Chamber reversed the Trial Chamber's decision.³ The Appeals Chamber held that the Trial Chamber had erred by failing to specifically warn the Accused that, if his disruptive behaviour were to persist, he might have his self-represented status revoked.⁴ The Appeals Chamber agreed with the Trial Chamber that "Assessment of the whole of Šešelj's pre-trial conduct to date by reference to the Trial Chamber's factual findings provides a strong indication that his self-representation at trial *would* lead to substantial and persistent disruption of the trial proceedings".⁵ The Appeals Chamber went on to explicitly warn the Accused that "should his self-representation subsequent to this Decision substantially obstruct the proper and expeditious proceedings in his 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".⁶

3. Following from this, the Trial Chamber issued a decision ordering the Registrar to appoint standby counsel to perform the following functions:

- (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 on 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 by or sent to the Accused;
- (e) to be present in the courtroom during proceedings;

¹ Decision on Assignment of Counsel, 21 August 2006.

² *Ibid.*, para. 79.

³ Decision on Appeal Against the Trial Chamber's Decision on Assignment of Counsel, 20 October 2006, para. 26 ("Appeal Chamber Decision").

⁴ *Ibid.*, para. 52.

⁵ *Ibid.*, para. 29, emphasis in original.

⁶ *Ibid.*, para. 52.

(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.⁷

4. The Accused's disruptive and obstructionist conduct continued after this point, and the Trial Chamber issued the Accused with several warnings, as detailed below.

5. At a status conference on 1 November 2006, the Accused repeatedly disrupted proceedings, refusing to remain in court in the presence of standby counsel.⁸ The Trial Chamber reminded the Accused that if he wished to challenge the Trial Chamber's order appointing standby counsel, appropriate legal avenues were open to him.⁹ But the Accused's disorderly conduct continued, and he was escorted out of the courtroom. The Trial Chamber ordered standby counsel to temporarily take over the conduct of the defence in accordance with paragraph (h), above.¹⁰

6. At a status conference on 8 November 2006, the Trial Chamber confirmed a prior finding that the Accused had on one occasion deliberately disclosed confidential information to a third party about a protected witness.¹¹ The reason for revisiting this matter at the status conference was the Accused's refusal to accept that he had breached confidentiality measures on that particular occasion. The Trial Chamber found his insistence that there had been no breach to be unacceptable and proceeded to issue the Accused with a "formal warning that

⁷ Order Concerning Appointment of Standby Counsel and Delayed Commencement of Trial, 25 October 2006, para. 5.

⁸ T. 627-628, 633-635.

⁹ T. 630-631.

¹⁰ T. 636.

¹¹ Closed session, T. 766.

should any future breach by you occur again, the Chamber will consider imposing counsel on you and taking other measures to protect witnesses testifying before this Tribunal".¹²

7. The Accused failed to attend the status conference on 22 November 2006. The Deputy Registrar informed the Trial Chamber that, in communications with the Commander of the United Nations Detention Unit (UNDU), he had been notified of the Accused's decision to desist from taking any food or medicine, and that the Accused felt too weak to attend the status conference.¹³ On the basis of the information provided by the Deputy Registrar, the Trial Chamber issued a warning, for delivery to the Accused at the UNDU, stating:

The Chamber has been informed that Mr. Šešelj is on a hunger strike. The Chamber has also been informed that Mr. Šešelj felt too weak to attend the Status Conference. And on the basis of the information this Chamber received and in the absence of any direct message from the accused addressed to the Chamber, the Chamber cannot but conclude that the physical condition of Mr. Šešelj is related to his hunger strike. The Chamber considers that whether this self-induced physical condition prevents Mr. Šešelj from attending today's hearing, or whether Mr. Šešelj has willfully decided not to attend the hearing, Mr. Šešelj's absence, not further explained by him, constitutes disruptive conduct. The Chamber hereby warns Mr. Šešelj that his behaviour may result in the temporary takeover of the defence by stand-by counsel during today's Status Conference, in accordance with the Chamber's order of the 25th of October, paragraph 5 (h).¹⁴

8. Following an adjournment to allow for the warning to be transmitted to the Accused, the status conference resumed. The Trial Chamber was informed of the Accused's continued refusal to appear in court, and the Deputy Registrar communicated to the Trial Chamber the Accused's comment in response to the warning: "No, I am not going. They are all idiots if they think I am going".¹⁵ The Trial Chamber thereby ordered standby counsel to temporarily take over the conduct of the Accused's defence, in accordance with paragraph (h), above.¹⁶

9. During the same status conference, in the Accused's absence, the Trial Chamber issued another warning to the Accused, which was to be communicated to him by means of a videotape of the session. The warning was in relation to the Accused's submissions of 6 November 2006, which were returned to the Accused because they exceeded the word limit or

¹² Ibid.

¹³ T. 777.

¹⁴ T. 782.

¹⁵ T. 784.

¹⁶ Ibid.

did not state a word count, in breach of the Trial Chamber's decision of 19 June 2006.¹⁷ The Trial Chamber warned the Accused that:

persistent non-compliance with the Chamber's decision on word limits is a form of obstructionist conduct. In our decision on assignment of counsel [...] the Chamber identified the ongoing filing of oversized motions as persistently abusive. If the accused would continue to submit oversized filings, the Chamber may consider imposing counsel upon the accused, of course, after having given an opportunity for him to be heard.¹⁸

10. Immediately after the 22 November status conference, the Trial Chamber issued a decision finding "that the Accused's failure to attend the Status Conference constitutes disruptive conduct which substantially obstructs the proper and expeditious proceedings in his case, thereby causing an impediment for the Trial Chamber to proceed with the trial, and that such conduct either by itself or in conjunction with other conduct in respect of which the Trial Chamber has issued warnings warrants the imposition of counsel".¹⁹ Furthermore, the Trial Chamber held that "The Accused is hereby warned that his conduct has been found to be substantially obstructive and that it warrants the imposition of counsel in accordance with the Trial Chamber's Order of 25 October 2006, paragraph 5 (i)".²⁰ The Trial Chamber invited the Accused to make written submissions by 24 November 2006 "regarding his recent conduct or any decision the Trial Chamber might take on the question of his legal representation", giving him a further opportunity to make submissions, orally, at the pre-trial conference on 27 November 2006.²¹ The Trial Chamber stated that "Should the Accused choose not to make any submissions on this matter by the above time limits, the Trial Chamber will interpret this as a waiver of his right to be heard and will proceed to a final decision."²²

11. The Accused did not present the Trial Chamber with any submissions, as invited; moreover, he failed to appear at the pre-trial conference on 27 November 2006. After hearing from the Registry about the reasons for the Accused's absence, the Trial Chamber issued the oral decision the reasons for which are given here.

12. According to the Appeals Chamber in the case of *Prosecutor v Slobodan Milošević*, the right to self-representation can be "curtailed on the grounds that a defendant's self-representation is substantially and persistently obstructing the proper and expeditious conduct

¹⁷ Decision on Filing of Motions, 19 June 2006.

¹⁸ T. 804.

¹⁹ Invitation to Accused to Make Submissions, 22 November 2006, p. 3.

²⁰ Ibid.

²¹ Ibid.

of his trial”.²³ Reaffirming this legal test, the Appeals Chamber, in its decision in the present case, stated: “All that the Trial Chamber was required to do was find that appropriate circumstances, rising to the level of substantial and persistent obstruction to the proper and expeditious conduct of the trial exists, thereby warranting restriction of Šešelj’s right to representation”.²⁴

13. Aside from the facts already established in the Trial Chamber’s decision of 21 August 2006, which were not disturbed on appeal, the Trial Chamber has considered the conduct of the Accused onwards from the date of the Appeals Chamber’s decision reinstating the Accused’s self-represented status. The Trial Chamber finds that the Accused has continued to deliberately disregard decisions by the Trial Chamber, in particular its Decision on Filing of Motions, submitting motions that are often tens of thousands of words over the limit set by the Trial Chamber.²⁵ The Trial Chamber finds that the Accused has repeatedly disrupted court hearings by deliberately and unreasonably interrupting the proceedings and by refusing to appear in court to represent himself. The Accused has been put on notice, and specifically warned by the Trial Chamber, that should his disruptive and obstructionist conduct continue, the Trial Chamber will consider imposing counsel on the Accused. In its warning arising from the Accused’s failure to attend the 22 November 2006 status conference, the Trial Chamber informed the Accused that his conduct amounted to substantial obstruction and warranted the imposition of counsel. The Trial Chamber gave the Accused an opportunity to challenge this conclusion, but the Accused not only passed up the opportunity, he once again failed to appear in court to represent himself at the pre-trial conference on 27 November 2006, causing further obstruction to the proceedings.

14. The Trial Chamber therefore finds that the Accused’s conduct of his defence is substantially and persistently obstructing the proper and expeditious proceedings in this case without any sign of improvement, and that his self-represented status should be revoked.

²² Ibid.

²³ *Prosecutor v Slobodan Milošević*, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel, 1 November 2004.

²⁴ Appeal Chamber Decision, para. 21.

²⁵ Submission No. 210 was 47,193 words, Submission No. 211 was 72,403 words, Submission No. 212 was 30,336 words.

THE TRIAL CHAMBER HEREBY:

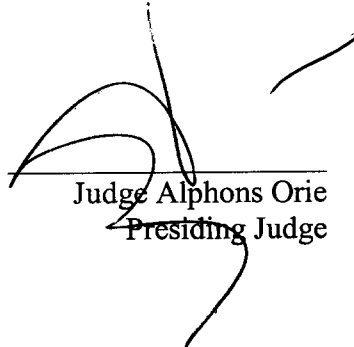
INSTRUCTS standby counsel (hereinafter "Counsel") to permanently take over the conduct of the Accused's defence, pursuant to paragraph 5 (i) of the Trial Chamber's order of 25 October 2006;

ORDERS that the Accused's participation in the proceedings henceforth will be through Counsel unless, having heard from Counsel, the Trial Chamber determines otherwise;

REQUESTS the Registry to appoint Mr Tjarda Eduard van der Spoel as independent counsel to take any necessary action in relation to an appeal of this decision, and requests the Registry to report to the Trial Chamber on this matter by 28 November 2006.

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

Dated this 27th day of November 2006
The Hague
The Netherlands



Judge Alphons Orie
Presiding Judge

[Seal of the Tribunal]