



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: 24 June 2014

Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Mandiaye Niang
Judge Flavia Lattanzi

Registrar: Mr John Hocking

Order of: 24 June 2014

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**ORDER INVITING HOST COUNTRY AND RECEIVING STATE TO
PRESENT THEIR COMMENTS WITH REGARD TO GUARANTEES FOR A
POSSIBLE PROVISIONAL RELEASE OF THE ACCUSED *PROPRIO MOTU***

The Office of the Prosecutor

Mr Serge Brammertz
Mr Mathias Marcussen

Government of the Kingdom of the Netherlands

Government of the Republic of Serbia

The Accused

Mr Vojislav Šešelj

1. Trial Chamber III (“Chamber”) of the 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 (“Tribunal”), considers a possible provisional release *proprio motu* of the Accused Vojislav Šešelj. This measure could avoid unnecessarily prolonging the detention of the Accused due to a new Judge in the case, whose familiarisation with the record will postpone the Judgement by several months, as it was originally scheduled for 30 October 2013.

PROCEDURAL BACKGROUND

2. On 13 June 2014 the Chamber issued an “Order Inviting the Parties to Make Submissions on Possible Provisional Release of the Accused *Proprio Motu*” (“Order of 13 June 2014”). In this Order the Chamber recalled that, following the disqualification of Judge Harhoff and the subsequent appointment of Judge Niang, it decided on 13 December 2013 to continue proceedings from the close of the hearings, as soon as Judge Niang finishes familiarising himself with the record.¹ Moreover, the Chamber recalled that in a decision of 6 June 2014, the Appeals Chamber upheld the Decision of 13 December 2013.² Noting that Judge Niang will need additional time in order to complete his familiarisation with the case and that the Accused has been in provisional detention since 24 February 2003, the Chamber recalls that it is responsible for ensuring the rights of the Accused.³

3. On 17 June 2014, the Accused replied to the Chamber’s invitation (“Response of 17 June 2014”).⁴ On 20 June 2014 the Prosecution in turn drew up its own submission (“Submission of 20 June 2014”).⁵

¹ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, “Order Inviting the Parties to Make Submissions on Possible Provisional Release of the Accused *Proprio Motu*”, 13 June 2014 (“Order of 13 June 2014”), p. 2, which refers to *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, “Decision on Continuation of Proceedings”, 13 December 2013 (“Decision on Continuation of Proceedings”), p. 23.

² Order of 14 June 2014, p. 2, which refers to *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, “Decision on Appeal against Decision on Continuation of Proceedings”, 6 June 2014.

³ Order of 13 June 2014, pp. 2-3.

⁴ “Professor Vojislav Šešelj’s Response to the Order of Trial Chamber III of 13 June 2014 Inviting the Parties to Make Submissions on Possible Provisional Release of the Accused *Proprio Motu*” (“Response of 17 June 2014”), 17 June 2014.

APPLICABLE LAW

4. The provisional release of an Accused is governed by Rule 65 of the Rules of Procedure and Evidence (“Rules”). According to Rule 65 (A) of the Rules, once detained, an Accused may not be released except upon an order of the Chamber. Pursuant to Rule 65 (B) of the Rules, the Chamber may order a release only after giving the host country and the State to which the Accused seeks to be released the opportunity to be heard and to be satisfied that the Accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person. Rule 65 (C) specifies that the Chamber may impose such conditions upon the release of the Accused as it may determine appropriate to ensure the presence of the Accused for trial and the protection of others.

ARGUMENTS OF THE PARTIES

5. In his Response of 17 June 2014, the Accused informed the Chamber that the only condition that he would accept if released *proprio motu* would be not to leave the territory of the Republic of Serbia. He would refuse to report periodically to a police station or to wear an electronic tag. He explained that he would take part in political life in Serbia, he would attend public meetings, give interviews to the media and publicly criticise the Tribunal.

6. In its Submission of 20 June 2014, the Prosecution noted that the Chamber was informed that the continued detention is not incompatible with any medical treatment that the Accused might require.⁶ In addition, in its Decision of 6 June 2014 upholding the continuation of proceedings, the Appeals Chamber considered that the Accused had not demonstrated that the length of the proceedings had violated his fair trial rights.⁷ Lastly, the Prosecution specified that if the Chamber rules *proprio motu* on the provisional release of the Accused, it should do so in accordance with the Tribunal’s practice set conditions that ensure that the Accused will not endanger victims,

⁵ “Prosecution Submission on Trial Chamber’s *Proprio Motu* Provisional Release of the Accused”, (“Submission of 20 June 2014”), 20 June 2014.

⁶ Submission of 20 June 2014, para. 2.

⁷ Submission of 20 June 2014, para. 3.

witnesses or other persons and that he returns to the Tribunal if and when the Chamber so orders.⁸

DISCUSSION

7. As stipulated in Article 20 (1) of the Statute of the Tribunal and as recalled by the Chamber on several occasions,⁹ the Chamber is the guarantor of the rights of the Accused. It must therefore make sure to limit the provisional release of the Accused strictly to the requirements of the proceedings.

8. The Chamber assumes that the Republic of Serbia, of which the Accused is a citizen, will be the natural destination should provisional release be granted. The observations of the Accused in his Response of 17 June 2014 confirm this assumption.¹⁰

9. However, before ruling on provisional release, in addition to the other conditions stipulated in Rule 65 (B) of the Rules, the Chamber must give the host country and the State to which the Accused seeks to be released the opportunity to be heard. Moreover, it may decide to make the provisional release of the Accused conditional on a number of conditions in order to guarantee his return for the pronouncement of the Judgement and to protect witnesses and victims.

REQUIRED MEASURES

10. In light of the foregoing, the Chamber calls on the Republic of Serbia to confirm whether it is able to guarantee the following measures:

1. to designate one or more officials of the Republic of Serbia to take custody of the Accused upon his release at the airport in the Netherlands and to escort him to his provisional place of residence; and to ensure similar measures are in place during the return journey from Serbia to the Netherlands, until the Accused is handed over to the Dutch authorities as soon as he is required to appear before the Tribunal;

⁸ Submission of 20 June 2014, para. 4.

⁹ "Decision on Continuation of Proceedings", para. 56; Order of 13 June 2014, p. 2.

¹⁰ Response of 17 June 2014, paras 3 and 4.

2. to facilitate, if requested by the Chamber or by the parties, every means of cooperation and communication between the parties and to guarantee the confidentiality of such communication;
 3. to ensure that the Accused is placed in home confinement at an address that the Serbian authorities will send to the Registrar of the Tribunal and to ensure an escort by the police authorities of the Republic of Serbia when travelling for medical treatment;
 4. to arrest the Accused immediately should he violate the obligatory home confinement;
 5. to take away the Accused's passport and not to issue a new travel document while home confinement measures are in place;
 6. to guarantee the personal safety and security of the Accused throughout his provisional release;
 7. to report to the Registrar of the Tribunal immediately any threats to the safety of the Accused and to provide him with detailed reports on this matter;
 8. to guarantee that the Accused does not have any contact with victims or witnesses or tries to influence them in any way whatsoever;
 9. to inform immediately the Chamber should the Accused breach or obstruct any of the measures put in place in regard of the above;
 10. to submit a situation report to the Chamber every fortnight.
11. The Chamber also calls on the Government of the Kingdom of the Netherlands to provide its observations on a possible provisional release of the Accused.

DISPOSITION

FOR THE FOREGOING REASONS, pursuant to Rules 54 and 65 of the Rules, the Chamber

REQUESTS that the Government of the Republic of Serbia confirms, within seven days from the date of receipt of the present Order, if it is able to guarantee the conditions prescribed herein;

CALLS UPON the Government of the Kingdom of the Netherlands to provide, within the same time frame, its observations on the proposed measures;

CHARGES the Registrar to forward the present Order to the Governments of the Republic of Serbia and the Kingdom of the Netherlands.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fourth day of June 2014
At The Hague
The Netherlands

[Seal of the Tribunal]