

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: 21 October 2009
Original: English

ACTING PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Mehmet Güney
Registrar: Mr. John Hocking
Decision of: 21 October 2009

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON VOJISLAV ŠEŠELJ'S REQUEST FOR REVIEW OF REGISTRAR'S
DECISION OF 10 SEPTEMBER 2009**

The Office of the Prosecutor:
Mr. Mathias Marcussen

The Accused:
Mr. Vojislav Šešelj (*pro se*)

1. I, **MEHMET GÜNEY**, Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of the International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”), am seised of a letter from Vojislav Šešelj (“Accused”) in which he requests the review of a decision of the Registrar dated 10 September 2009 (“Request” and “Impugned Decision”, respectively).¹ In the Request, the Accused asks the President of the Tribunal to reverse the Impugned Decision, in which the Registrar denied: (a) a privileged visit to the Accused by Messrs. Zoran Krasić and Slavko Jerković on the premises of the United Nations Detention Unit (“UNDU”); and (b) the Accused’s request for reimbursement of travel expenses associated with his legal associates’ visits to him. The Registrar submits that the Request should be dismissed.²

I. PROCEDURAL HISTORY

2. The Accused, who has elected to represent himself before this Tribunal, decided to go on a hunger strike on 11 November 2006. In order to accommodate the Accused, the Registrar, on 7 December 2006, granted the Accused’s request for the acceptance of three individuals as his legal associates, including the arrangement that he would have privileged communications with them via a dedicated phone line, mail, and in-person visits at the UNDU.³ These three individuals were Messrs. Zoran Krasić, Slavko Jerković, and a third legal associate, Mr. Aleksandar Vučić. The latter was replaced by Mr. Boris Aleksić on 24 September 2008.⁴

3. The Registrar also agreed to cover certain “reasonable costs” associated with the Accused’s defence, including certain travel costs of the legal associates provided that they agreed in writing to abide by the same rules of conduct as defence counsel assigned to accused persons before the Tribunal.⁵ This agreement included the maintenance of the confidentiality of under seal documentation to which they would be granted access.⁶

¹ The letter was dated 11 September 2009. It was translated and filed on 15 September 2009 under the title “Submission No. 425”.

² Registry Submission Pursuant to Rule 33(B) Regarding the Accused’s Submission No. 425, 23 September 2009 (“Registry Submission”), para. 34.

³ Registry Submission, paras 4–6, 9–10.

⁴ Registry Submission, para. 17.

⁵ Registry Submission, paras 7, 8.

⁶ Registry Submission, para. 8.

4. On 17 November 2006, the Accused was warned that abuse of the privileged telephone line could lead to the withdrawal of the Registrar's acceptance of (or) the privileged status of the legal associates.⁷

5. In December 2007, the Registrar began to suspect that the Accused was using the unmonitored, privileged phone line—which was only to be used to communicate with his legal associates regarding his case—for political purposes.⁸ On 15 September 2008, the Accused was asked to comment upon the suspected abuse of the telephone line and warned that the privileged status of his legal associates may be withdrawn if the Registrar had reasonable grounds to believe that it had been abused.⁹

6. On 29 September 2008, the Registrar found that reasonable grounds existed to believe that the privileged communication facilities granted to the Accused for the preparation of his defence at the UNDU had been used for communication with unauthorised persons for matters not related to the preparation of his defence.¹⁰ The Registrar also found that reasonable grounds existed to believe that the Accused may have also been using the privileged telephone line to facilitate interference with or intimidation of witnesses.¹¹ As a result, the Registrar, pursuant to Rule 65(B) of the Rules of Detention,¹² decided to monitor the Accused's communications with his legal associates.¹³

7. On 9 October 2008, the Accused seized the Trial Chamber with his oral motion concerning the Registrar's Decision on Communication.¹⁴ On 27 November 2008, a majority of the Trial Chamber found that: (1) it had jurisdiction to entertain the Accused's motion;¹⁵ and (2) monitoring the Accused's communications with his legal associates would prevent him from defending himself effectively. It further invited the Registrar to "draw all the necessary inferences from the Trial Chamber's conclusions".¹⁶ The Registrar subsequently sought direction from the President of the Tribunal regarding the discharge of its duties in light of the Trial Chamber's decision.¹⁷ On 17

⁷ Registry Submission, p. 5, note 9.

⁸ Registry Submission, para. 11.

⁹ Registry Submission, p. 5, footnote 9.

¹⁰ Registry Submission, para. 14.

¹¹ *Ibid.*

¹² Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the International Tribunal or Otherwise Detained on the Authority of the International Tribunal (IT/38/REV.9), 21 July 2005 ("Rules of Detention").

¹³ Registry Submission, para. 14; see Registrar's Decision to Monitor all Communication Between the Accused and his Legal Associates ("Registrar's Decision on Communication"), 29 September 2008..

¹⁴ Hearing of 9 October 2008, Court Transcript in French, T. 10584-10585.

¹⁵ Redacted Version of the "Decision on Monitoring the Privileged Communications of the Accused with Dissenting Opinion by Judge Harhoff in Annex" Filed on 27 November 2008, 9 December 2008 ("27 November 2008 Decision"), para. 21.

¹⁶ *Id.*, paras 28, 34.

¹⁷ Urgent Registry Submission Pursuant to Rule 33(B) Seeking Direction from the President Regarding the Trial Chamber's Decision of 27 November 2008, 1 December 2008.

December 2008, the President found that only the Appeals Chamber could issue a decision binding upon the Trial Chamber as to whether, *inter alia*, the Trial Chamber lacked jurisdiction to entertain the Accused's motion.¹⁸ On 9 April 2009, the Appeals Chamber ruled that the Trial Chamber lacked jurisdiction over the matter and invalidated the Trial Chamber's 27 November 2008 Decision.¹⁹

8. In the meantime, the Registrar, on 28 November 2008, revoked the privileged status of the Accused's legal associates Messrs. Krasić and Jerković, but not of Mr. Aleksić. In a letter to the Accused, the Registrar wrote the following:

[...] coupled with the allegations of witness harassment and interference which are the subject of submissions that are still pending before the International Tribunal, as well as [Messrs. Krasić and Jerković's] conduct before this International Tribunal of which I have repeatedly warned you and them, I have serious concerns about their suitability to remain in your defence team as recognized legal advisors with privileged access to you. I am particularly concerned that in addition to the allegations pertaining to witnesses, they appear to have revealed confidential information to the public which is contrary to the proper administration of justice. In addition, they have repeatedly made public statements which are abusive towards the International Tribunal and acted in a manner that could bring the International Tribunal into disrepute. Bearing in mind these actions by the said legal advisors, I hereby inform you that I have suspended their privileged status awaiting the outcome of certain motions pending before the International Tribunal implicating them adversely.²⁰

9. The Registrar then confirmed that the legal associates Messrs. Krasić and Jerković could continue working on the Accused's defence team and could visit him as friends under Rule 61 of the Rules of Detention (*i.e.* monitored visits). However, they would not enjoy privileged communications with the Accused, nor would they be provided with any confidential documents.²¹

10. On 26 December 2008, the Registrar denied a request of the Accused for a privileged visit from Messrs. Krasić and Jerković, but allowed them to visit the Accused as friends pursuant to Rule 61(A) of the Rules of Detention. The Registrar allowed the privileged visit of another legal associate, Mr. Aleksić, and the case manager, Ms. Marina Raguš. He refused the Accused's request for reimbursement of the travel expenses of any of these individuals "in light of the abuse of the communication facilities and in the absence of a determination regarding indigency" of the Accused.²²

11. By correspondence of 1 September 2009, the Accused requested authorisation for a privileged visit, with travel costs covered, by Messrs. Krasić, Jerković, Aleksić, Ms. Raguš, and Mr.

¹⁸ *Id.*, para. 9.

¹⁹ Registry Submission, p. 7, footnote 18; see Decision on the Registry Submission Pursuant to Rule 33(B) Following the President's Decision of 17 December 2008, 9 April 2009, paras 20, 21.

²⁰ Registry Submission, para. 17.

²¹ Registry Submission Pursuant to Rule 33(B) Regarding the Trial Chamber's Decision on Monitoring of Vojislav Šešelj's Communications, 1 December 2008, para. 9.

²² Registry Submission, para. 19.

Dejan Mirović, a new legal associate designated for the purposes of the appeal against the contempt judgement against the Accused. On 10 September 2009, the Registrar issued the Impugned Decision, in which he allowed a privileged visit to the Accused by Mr. Aleksić and Mr. Mirović, accompanied by Ms. Raguš. However, he only allowed a non-privileged visit by Messrs. Krasić and Jerković. In addition, the Registrar refused to cover the travel expenses of any of these persons based upon the fact that the Accused “failed to cooperate with the determination of [his] financial status”.²³

12. On 7 October 2009, in accordance with Rule 15(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), Vice-President Judge O-Gon Kwon in his capacity as Acting President noted that the President of the Tribunal withdrew from considering the Request, owing to a conflict of interest arising from his role as Presiding Judge of the Pre-Trial Bench in the present case.²⁴ He further found that his role as Presiding Judge on an interlocutory appeal Bench in the present case likewise gives rise to a conflict of interest and that he therefore also had to withdraw from considering the Request.²⁵

13. Consequently, and pursuant to Rules 21 and 22(A) of the Rules, I was assigned to consider the Request in the President’s and the Vice-President’s place.²⁶

II. SUBMISSIONS

14. In the Request, the Accused asks the President to review the “illegal and discriminatory [Impugned Decision] and revise it in such a way that all [his] justified requests are granted”. He complains that approximately a year ago, the Registrar suspended the privileged status of his legal associates Messrs. Krasić and Jerković on the basis of “false and never proven accusations that they had exerted pressure on protected witnesses, enabled the violation of the right to privileged telephone conversations and disclosed confidential information to the public”, but that no proceedings have been conducted against them. The Accused further avers that “[n]ew allegations have now been added”, namely that his legal associates have repeatedly made public statements abusive towards the Tribunal and acted in a manner that could bring the Tribunal into disrepute. According to the Accused, “[t]hese accusations are preposterous as it is a well-known fact that the Hague Tribunal has never enjoyed any professional or moral reputation”.²⁷

²³ Registry Submission, paras 20, 34.

²⁴ Order Assigning Vojislav Šešelj’s Request for Review of Registrar’s Decision of 10 September 2009, 7 October 2009.

²⁵ *Ibid.*, referring to *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R-77.2.

²⁶ *Ibid.*

²⁷ Request, p. 1.

15. The Registry submits in response that: (a) the Accused has no right to privileged communications with the legal associates Messrs. Krasić and Jerković; and (b) he is not entitled to reimbursement of defence travel expenses without a determination of indigence.²⁸

16. Regarding the revocation of privileged communications, the Registrar submits that Messrs. Krasić and Jerković are not, and have never been, the Accused's "legal representatives" because he is representing himself.²⁹ Since self-represented accused act as their own counsel and persons assisting them act in a support-staff capacity, the Registry contends that neither the Accused nor the legal associates can claim a client-counsel privilege within the ambit of Rule 65 of the Rules of Detention. In addition, it is submitted that the Accused was only granted privileged communications with his legal associates out of a "gesture of good will" rather than an entitlement, and that since this good will has been abused, the Registrar was justified in revoking the privileges granted.³⁰

17. Regarding the revocation of travel expenses, the Registry submits that there is no legal basis for the authorisation of such expenses for any of the Accused's legal associates (or case manager) absent a determination of indigence. The Registry explains that for an accused's assigned counsel pursuant to the Tribunal's legal aid scheme, the Tribunal bears all reasonable and necessary travel expenses associated with his defence, a principle which applies *mutatis mutandis* to self-represented accused who are assigned assistants under the Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused.³¹ Self-representation notwithstanding, the Remuneration Scheme requires demonstration by the Accused that he is indigent.³² Despite this legal framework, the Registrar accepted to meet some "reasonable costs" associated with the Accused's defence, including travel expenses.³³

18. The Registry further contends that in view of its finding that the Accused had abused the privileged communications facilities at the UNDU, the Registry "had no choice but to discontinue the exceptional arrangement the Accused was benefiting from".³⁴ Finally, the Registry submits that it has always made clear to the Accused the exceptional nature of the decision to reimburse his legal associates' travel costs, and has reminded the Accused that he had yet to establish his indigency, and thus that "it cannot reasonably be argued that the Accused has had a legitimate expectation that

²⁸ Registry Submission, paras 22, 28, 36.

²⁹ Registry Submission, para. 25.

³⁰ Registry Submission, paras 22–27.

³¹ Remuneration Scheme for Persons Assisting Indigent Self-Represented Accused, 24 July 2009 (Rev. 1) ("Remuneration Scheme").

³² Registry Submission, paras 28–29.

³³ Registry Submission, para. 30.

³⁴ Registry Submission, paras 30–32.

the International Tribunal would continue to finance the trips of his associates to The Hague in all circumstances and for an unlimited period of time.”³⁵

III. STANDARD OF REVIEW

19. Review of a Registrar’s decision under Rule 19(A) of the Rules is “neither a rehearing nor an appeal”.³⁶ Judicial review of an administrative decision calls for application of a different standard set forth by the Appeals Chamber in *Kvočka et al.*, pursuant to which such a decision may only be quashed if the Registrar has: (a) failed to comply with the relevant legal requirements; (b) failed to observe basic rules of natural justice or to act with procedural fairness toward the accused; (c) taken into account irrelevant material or failed to take into account relevant material; or (d) has reached a conclusion that no reasonable person could have reached on the material before the Registrar.³⁷

IV. DISCUSSION

A. Privileged communications

20. The Accused was permitted privileged communications with three legal associates of his choosing. One of the main vehicles for these confidential communications was the privileged and unmonitored telephone line to which the Accused had access to communicate with his legal associates from the UNDU. When the Registrar came into the possession of reasonable grounds that this telephone line was being used by the Accused and his legal associates Messrs. Kراسić and Jerković for purposes not related to the preparation of this case, but rather for political purposes or even the disclosure of confidential information, the Registrar warned the Accused and his legal associates that any such abuse of the privileges they had been granted could be terminated.³⁸ On 28 November 2008, the Registrar suspended the legal associates Messrs. Kراسić and Jerković privileged communications with the Accused due to: (a) allegations of witness intimidation; (b) allegations of the disclosure of confidential information; and (c) their repeated public statements which were abusive of the Tribunal.³⁹ The Registrar made clear that this suspension was dependent upon the outcome of certain pending motions which implicated the legal associates in these

³⁵ Registry Submission, paras 33–34.

³⁶ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Decision on Review of Registrar’s Decision to Withdraw Legal Aid from Zoran Žigić, 7 February 2003, para. 13; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Decision on Request for Reversal of Limitations of Contact with Journalist, 21 April 2009, para. 19; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision Affirming the Registrar’s Denial of Assigned Counsel’s Application to Withdraw, 7 February 2005, para. 4.

³⁷ *Ibid.*

³⁸ Registry Submission, para. 11, footnotes 8–9.

³⁹ The letter did only address Messrs. Kراسić and Jerković as Mr. Vučić has already been dismissed from the Accused’s defence team on 24 September 2008.

matters.⁴⁰ Significantly, the Registrar did not leave the Accused without any legal assistance. On 24 September 2008, he had granted privileged communications with another legal associate, Mr. Aleksić, who had replaced Mr. Vučić.⁴¹

21. The Registrar has acted in an appropriate and restrained manner in suspending, pursuant to Rule 65(B) of the Rules of Detention, the Accused's privileged communications with his legal associates Messrs. Krsić and Jerković in order to safeguard the administration of justice. A Registrar has a duty to act in order to prevent the intimidation of witnesses and the disclosure of confidential information. When he came into possession of information showing that his decision to allow privileged communications between the Accused and the above-mentioned legal associates was being abused, it was appropriate—even required—for him to counteract the detrimental interference with the administration of justice and prevent any interference with or intimidation of witnesses.⁴²

B. Reimbursement of travel expenses

22. In the Impugned Decision, the Registrar decided to no longer fund the travel expenses not only of the two suspended legal associates, but also the travel expenses of the remaining persons allowed to provide him assistance.⁴³ The reason for this decision was that the Accused “failed to cooperate with the determination of [his] financial status”.⁴⁴

23. Regarding the issue of funding of self-represented accused, the Appeals Chamber has held in the *Krajišnik* case:

To the extent that the Registry requires or encourages *indigent self-representing accused* to coordinate their defences through designated legal associates, it is appropriate for the Tribunal to provide some funding for such associates. [...] The Registry may impose additional criteria on designated legal associates who seek funding from the Tribunal (comparable to the Registry's ability to require that Tribunal-funded counsel meet the requirements of Rule 45 of the Rules as well as of Rule 44 of the Rules).⁴⁵

⁴⁰ Registry Submission, para. 17.

⁴¹ *Ibid.* The Accused's legal associates Messrs. Krsić and Jerković are still permitted to assist the Accused with his case. If the allegations of interference with the administration of justice prove to be baseless, the Registrar may even consider reinstating their privileged status.

⁴² See Rule 65(B) of the Rules of Detention: “All such communications shall be privileged, unless the Registrar has reasonable grounds to believe that the privilege is being abused in an attempt to: [...]

ii. interfere with or intimidate witnesses;

iii. interfere with the administration of justice; [...].”

It also bears noting that the Accused's legal associates never underwent the established procedures in respect of their credentials so that they could be acknowledged as his legal associates; rather, their status was the result of negotiation during the Accused's hunger strike. As such, there was and is no entitlement in respect of their privileged status.

⁴³ Registry Submission, para. 20.

⁴⁴ *Ibid.*

⁴⁵ *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik Request and on Prosecution Motion, 11 September 2007, para. 42 (emphasis added).

24. The Registry implemented the Appeals Chamber's above holding by adopting the Remuneration Scheme. Paragraph 2.1 of the Remuneration Scheme provides that "[o]nly detained self-represented accused *who are found to be indigent or partially indigent* are eligible for the remuneration of their defence teams by the Tribunal".⁴⁶ Moreover, the Remuneration Scheme places the burden upon an accused to demonstrate that he is unable to pay for his defence himself.⁴⁷

25. Therefore, prior to receiving funding for the travel expenses of any of his legal associates, the Accused must have first demonstrated that he is indigent or partially indigent. The Accused has not done this. He therefore has failed to fulfil an administrative prerequisite to the relief he seeks and is not entitled to any reimbursement for the services of those supporting him as he seeks to represent himself before the Tribunal. In addition, when granting, on a voluntary basis, past reimbursements for travel costs, the Registrar has informed the Accused that this was an exceptional measure and has reminded the Accused of his failure to establish his indigency. Thus, it cannot be argued that the Registrar's handling of this matter in the past estops him from taking the present decision. Indeed, the Accused may even have to reimburse the Tribunal for past amounts rendered, in the event that he attempts to demonstrate his indigency and then fails.

26. Furthermore, paragraph 8.1 of the Remuneration Scheme states that "[a]ny disputes over remuneration or reimbursement of expenses arising from the application of this Remuneration Scheme shall be settled in accordance with Article 31 of the Directive [on the Assignment of Defence Counsel]".⁴⁸ It would appear that the Accused has made no attempts to avail himself of the procedures for the settlement of this dispute under the provisions of Article 31 of the Directive. I therefore consider that this matter is not properly before me at the present time.

V. DISPOSITION

27. Based upon the foregoing, I consider that the Accused has not demonstrated that the Registrar has: (a) failed to comply with the relevant legal requirements; (b) failed to observe basic rules of natural justice or to act with procedural fairness toward the Accused; (c) taken into account irrelevant material or failed to take into account relevant material; or (d) has reached a conclusion that no reasonable person could have reached on the material before him.

⁴⁶ Emphasis added. See also *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Financing of Accused's Defence, 23 April 2009, para. 23.

⁴⁷ Remuneration Scheme, para. 2.1.

⁴⁸ Directive on the Assignment of Defence Counsel (Directive No. 1/94, IT/73/Rev. 11), amended 29 June 2006 ("Directive").

28. For all the foregoing reasons and in light of Rule 65(B) of the Rules of Detention, paragraph 8.1 of the Remuneration Scheme, and Article 31 of the Directive, the Request is hereby **DISMISSED** in its entirety.

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



Judge Mehmet Güney

Dated this 21st day of October 2009
At The Hague,
The Netherlands

[Seal of the Tribunal]