



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 March 2012
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 21 March 2012

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON FURTHER NOTIFICATIONS
TO THE PRESIDENT SUBMITTED BY
THE LEGAL ADVISOR TO VOJISLAV ŠEŠELJ**

The Office of the Prosecutor
Mr. Mathias Marcussen

The Accused
Mr. Vojislav Šešelj

1. **I, THEODOR MERON**, President 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”), am seized of the “Report/Warning To: the President of the ICTY Judge Theodor Meron”, filed by Mr. Dejan Mirović, legal advisor to Mr. Vojislav Šešelj (“Legal Advisor” and “Šešelj”, respectively) on 13 February 2012 (“First Notification”), and the “Information/Caution To: the President of the ICTY Judge Theodor Meron”, filed by the Legal Advisor on 22 February 2012 (“Second Notification”). The Registrar of the Tribunal (“Registrar”) filed submissions in relation to the First Notification and the Second Notification, respectively.¹ Although Šešelj was invited to respond to the Registrar’s submissions,² he has not done so.

I. BACKGROUND

2. Šešelj is a self-represented accused, currently facing three cases before the Tribunal.³ The first proceeding, or main case, against Šešelj involves allegations of crimes against humanity and violations of the laws and customs of war committed in the former Yugoslavia.⁴ Šešelj is also involved in two ongoing contempt proceedings.⁵

3. Upon Šešelj’s requests, the Registrar has recognised the Legal Advisor as a legal advisor to Šešelj in the main case against Šešelj as well as in one of the ongoing contempt proceedings.⁶ Šešelj has also requested that the Legal Advisor be recognised as such in the other ongoing contempt proceeding.⁷

II. STANDARD OF REVIEW

4. The following standard has been set for the review of administrative decisions made by the Registrar:

¹ Registry Submission Pursuant to Rule 33(B) Regarding Travel of Vojislav Šešelj’s Defence Team, 14 February 2012 (public with confidential annex) (“First Registry Submission”); Registry Submission Pursuant to Rule 33(B) Regarding Visit of Vojislav Šešelj’s Defence Team at the United Nations Detention Unit, 28 February 2012 (public with confidential and confidential and *ex parte* annexes) (“Second Registry Submission”).

² See Order on the Registry Submission Pursuant to Rule 33(B), 16 February 2012, p. 1; Order on the Letter to the President by the Legal Advisor to Vojislav Šešelj, 23 February 2012, p. 1.

³ See Decision on Notifications to the President Submitted by the Legal Advisor to Vojislav Šešelj, 24 February 2012 (“First Decision on Notifications”), para. 2; Decision on Request for Review of Registry Decision Regarding Visit of Defence Team Members, 10 August 2011 (public redacted version) (“Decision on Visit of Defence Team Members”), para. 2.

⁴ Third Amended Indictment, 7 December 2007.

⁵ See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Order Assigning Judges to a Case Before the Appeals Chamber, 15 November 2011, p. 2; *In the Matter of Vojislav Šešelj*, Case No. IT-03-67-R77.4, Scheduling Order, 9 November 2011, p. 2.

⁶ See First Decision on Notifications, para. 3; Decision on Visit of Defence Team Members, para. 7.

⁷ See *In the Matter of Vojislav Šešelj*, Case No. IT-03-67-R77.4, Initial Appearance, T. 6 July 2011, p. 10.

A judicial review of [...] an administrative decision is not a rehearing. Nor is it an appeal, or in any way similar to the review which a Chamber may undertake of its own judgment [*sic*] in accordance with Rule 119 of the Rules of Procedure and Evidence [of the Tribunal]. A judicial review of an administrative decision made by the Registrar [...] is concerned initially with the propriety of the procedure by which [the] Registrar reached the particular decision and the manner in which he reached it.⁸

Accordingly, an administrative decision may be quashed if the Registrar:

- (a) failed to comply with [...] legal requirements [...], or
- (b) failed to observe any basic rules of natural justice or to act with procedural fairness towards the person affected by the decision, or
- (c) took into account irrelevant material or failed to take into account relevant material, or
- (d) reached a conclusion which no sensible person who has properly applied his mind to the issue could have reached (the “unreasonableness” test).⁹

5. Unless unreasonableness has been established, there can be no interference with the margin of appreciation of the facts or merits of that case to which the maker of such an administrative decision is entitled.¹⁰ The onus of persuasion lies on the party challenging the administrative decision to show both that: (1) an error of the nature enumerated above has occurred, and (2) such an error has significantly affected the administrative decision to his detriment.¹¹

III. DISCUSSION

A. Submissions

6. In the First Notification, the Legal Advisor argues that although Šešelj has the right to receive visits by his legal advisors as well as his case manager, Mr. Nemanja Šarović (“Case Manager”), this right is “being thrown into doubt.”¹² The Legal Advisor alleges that a visit was scheduled for 16 and 17 February 2012, but that the Registry of the Tribunal (“Registry”) has refused to cover travel and accommodation expenses, including, in particular, the expenses of the Case Manager.¹³ The Legal Advisor asserts that “it is impossible to work normally” on the main

⁸ *Prosecutor v. Miroslav 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 (“Žigić Decision”), para. 13. *See also The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, Decision on Request for Review of OLAD Decision on Trial Phase Remuneration, 19 February 2010 (“Karadžić Decision”), para. 9.

⁹ *Karadžić Decision*, para. 9. *See also Žigić Decision*, para. 13.

¹⁰ *Žigić Decision*, para. 13. *See also Karadžić Decision*, para. 10.

¹¹ *Karadžić Decision*, para. 10. *See also Žigić Decision*, para. 14.

¹² First Notification, p. 1.

¹³ First Notification, p. 1.

case against Šešelj, Case No. IT-03-67, and one of the contempt cases, Case No. IT-03-67-R77.3, if the Case Manager is excluded.¹⁴ He also maintains that these cases are closely linked.¹⁵ The Legal Advisor contends that Šešelj's "human and procedural rights" have been violated, and asks that I allow Šešelj's defence in Case No. IT-03-67 and Case No. IT-03-67-R77.3 to be prepared as normal.¹⁶

7. In the Second Notification, the Legal Advisor alleges that on 16 and 17 February 2012, he, another of Šešelj's legal advisors, and the Case Manager "were not allowed a privileged visit" with Šešelj at the United Nations Detention Unit ("UNDU").¹⁷ The Legal Advisor contends that during their visit, they were locked in a room for several hours without explanation, and further alleges that they were informed by the Registry that their "conversations would be listened in on" and that they were prohibited from discussing Šešelj's main case.¹⁸ The Legal Advisor also states that accommodation and travel expenses were not paid and that these facts indicate that Šešelj's defence, as well as the work of his legal advisors and Case Manager, "are still being grossly obstructed."¹⁹ The Legal Advisor again asserts that Šešelj's "human and procedural rights" have been violated, and asks that I enable Šešelj to prepare his defence in Case No. IT-03-67 and Case No. IT-03-67-R77.3 in a normal manner.²⁰

8. In response to both the First Notification and the Second Notification, the Registrar submits that the Legal Advisor has no standing to make submissions before the Tribunal on behalf of Šešelj.²¹ The Registrar contends that Šešelj has elected to represent himself in proceedings before the Tribunal and that none of his assistants have been granted rights of audience, nor has he ever requested that such rights be granted.²² The Registrar adds that the limited and exceptional right of audience granted to the Legal Advisor in the First Decision on Notifications does not encompass the present case.²³ The Registrar also requests that the First Notification and the Second Notification be removed from the case record.²⁴

9. With respect to the First Notification, the Registrar further submits that the Registry informed Šešelj that any request for the travel of his advisors must originate from Šešelj himself as

¹⁴ First Notification, p. 1.

¹⁵ First Notification, p. 1.

¹⁶ First Notification, p. 1.

¹⁷ Second Notification, p. 1.

¹⁸ Second Notification, p. 1.

¹⁹ Second Notification, p. 1.

²⁰ Second Notification, p. 1.

²¹ First Registry Submission, para. 2; Second Registry Submission, para. 2.

²² First Registry Submission, para. 2; Second Registry Submission, para. 2.

²³ Second Registry Submission, para. 3, *referring to* First Decision on Notifications, para. 7.

²⁴ First Registry Submission, para. 2; Second Registry Submission, para. 3.

a self-represented accused.²⁵ The Registrar adds that Šešelj was also informed that, if the purpose of the travel is related to the main case against Šešelj, the Registry is prepared to approve the travel of the legal advisors recognised for that case.²⁶ The Registrar asserts that Šešelj never filed such a request.²⁷ Furthermore, the Registrar argues that there is no legal basis for the Registry to cover costs related to the contempt cases against Šešelj, nor is Šešelj entitled to receive travel funds for the Case Manager, who is not assigned to the main case against Šešelj.²⁸

10. In relation to the Second Notification, the Registrar also submits that Šešelj is not entitled to hold privileged meetings regarding the main case in the presence of the Case Manager, and that Šešelj, aware of this, chose to have a non-privileged meeting with the Case Manager present.²⁹ With respect to the Legal Advisor's allegations regarding the administration of the visit, the Registrar states that the procedures followed were within the standard operating procedures of the UNDU, that the room was locked to avoid inadvertent contact with other accused, and that Šešelj and his visitors were able to leave the room upon request at all times.³⁰ Additionally, the Registrar notes that it has yet to receive a request from Šešelj for the reimbursement of travel and accommodation costs in relation to the visit of his legal advisors.³¹

B. Analysis

11. I recall that the decision to grant a limited right of audience to a legal advisor of a self-represented accused is discretionary and depends upon the circumstances of the particular case.³² I further recall that I have previously granted the Legal Advisor a limited and exceptional right of audience solely in relation to prior letters from the Legal Advisor in which he alleged that Šešelj had been prevented from writing to me himself concerning alleged violations of his human rights.³³ I note that no such right of audience has otherwise been granted to the Legal Advisor in this case, nor does it appear that Šešelj has requested that such right be granted. I also observe that Šešelj has not made submissions in relation to these notifications. Having considered the allegations in the

²⁵ First Registry Submission, para. 5, Confidential Annex I.

²⁶ First Registry Submission, paras 6, 12.

²⁷ First Registry Submission, paras 7, 11.

²⁸ First Registry Submission, paras 8-11.

²⁹ Second Registry Submission, paras 8-10, 13.

³⁰ Second Registry Submission, paras 11, 14.

³¹ Second Registry Submission, paras 12, 15.

³² See First Decision on Notifications, para. 7. See also *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Decision on Accused's Request to the Trial Chamber Concerning Assistance of his Legal Advisor, 28 April 2010 (public redacted version), paras 23-24.

³³ First Decision on Notifications, para. 7.

First Notification and Second Notification, I find that the interests of justice do not require that I grant the Legal Advisor a right of audience in this instance.³⁴

IV. DISPOSITION

12. For the foregoing reasons, the First Notification and the Second Notification are **DISMISSED**.

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

Done this 21st day March 2012,
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]

³⁴ I note that the Registrar has requested that the First Notification and the Second Notification be removed from the case record. In the present circumstances, I do not consider it necessary to do so.