

IT-03-67-T
D16048-D16046
05 DECEMBER 2006

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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 Former Yugoslavia since
1991**

Case No.

IT-03-67-T

Date:

5 December 2006

Original:

English

IN TRIAL CHAMBER I

Before:

**Judge Alphons Orie, Presiding
Judge Frank Höpfel
Judge Ole Bjørn Støle**

Registrar:

Mr. Hans Holthuis

Decision of:

5 December 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON REQUEST FOR CERTIFICATION TO APPEAL DECISION (NO. 2)
ON ASSIGNMENT OF COUNSEL**

The Office of the Prosecutor:

**Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemer
Ms Melissa Pack
Ms Joanne Motoike**

Counsel for the Accused:

**Mr David Hooper
Mr Andreas O'Shea**

Independent Counsel:

Mr Tjarda Eduard van der Spoel

1. At the pre-trial conference on 27 November 2006, the Trial Chamber issued an oral decision (“Decision”) finding that the Accused’s self-representation since 20 October 2006 “has substantially obstructed the proper and expeditious conduct of the proceedings”.¹ The Trial Chamber instructed standby counsel to permanently take over the conduct of the defence from the Accused, pursuant to the Trial Chamber’s Order of 25 October 2006,² and ordered that “the Accused’s participation in the proceedings henceforth will be through Counsel unless, having heard from Counsel, the Trial Chamber determines otherwise”.³ The Trial Chamber also requested the Registry to appoint Mr Tjarda Eduard van der Spoel as independent counsel to take any necessary action in relation to an appeal of the decision.⁴ The Trial Chamber explained the reasons behind the Decision in writing on 27 November 2006.⁵

2. In accordance with the Decision, the Acting Deputy Registrar on 30 November 2006 assigned Mr van der Spoel as independent counsel to the Accused for the purpose of taking any necessary action in relation to an appeal of the Trial Chamber’s decision.⁶

3. On 4 December 2006, Mr van der Spoel requested certification to appeal the Decision of 27 November 2006. He argued that the right to self-representation is a fundamental right of an accused and that any infringement of this right clearly involves an issue that can significantly affect the fair and expeditious conduct of the proceedings. Furthermore, he argued that the decision affects the overall fairness of the trial and is therefore a potential ground for appeal in which the Appeals Chamber could order a retrial of the case. He concluded by suggesting that resolution of the matter at this stage would materially advance the proceedings.⁷

4. On 5 December 2006, the Prosecution responded and informed the Trial Chamber that they do not oppose the request for certification.⁸

5. Rule 73 (B) of the Rules of Procedure and Evidence provides that a Trial Chamber may grant certification to appeal a decision “if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the

¹ T. 824.

² Order Concerning Appointment of Standby Counsel and Delayed Commencement of Trial, 25 October 2006.

³ T. 825.

⁴ T. 825.

⁵ Reasons for Decision (no. 2) on Assignment of Counsel, 27 November 2006.

⁶ Decision by the Acting Deputy Registrar assigning Mr. van der Spoel as independent counsel, 30 November 2006.

⁷ Request for Certification pursuant to Rule 73 (B) to Appeal against the Trial Chamber Oral Decision to Assign Counsel to the Accused, 4 December 2006.

⁸ Prosecution’s Response to Independent Counsel’s Request for Certification pursuant to Rule 73 (B) to Appeal against the Trial Chamber Oral Decision to Assign Counsel to the Accused, 5 December 2006.

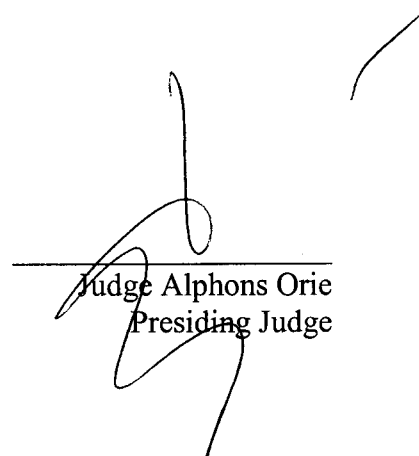
trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings”.

6. The Trial Chamber considers that, for the purpose of Rule 73 (B), the Decision of 27 November 2006 involves the same issue as the Decision on Assignment of Counsel of 21 August 2006.⁹ If the Trial Chamber did err in its finding that the Accused’s self-representation since 20 October 2006 has substantially obstructed the proper and expeditious conduct of the proceedings this would impair the Decision. If the Trial Chamber, for this or for any other reason, was erring in its decision not to allow the Accused to further represent himself this would significantly affect the fairness of the trial. The Decision to assign counsel, therefore, involves an issue that significantly affects the fair and expeditious conduct of the proceedings. The Trial Chamber further finds that an immediate resolution of this question by the Appeals Chamber, at this stage, would reduce the risk of a potential retrial, and thus materially advance the proceedings.

7. Therefore, the Trial Chamber, pursuant to Rule 73 (B), **GRANTS** the Request.

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

Dated this 5th day of December 2006
The Hague
The Netherlands



Judge Alphons Orie
Presiding Judge

[Seal of the Tribunal]

⁹ Decision on Assignment of Counsel, 21 August 2006. Certification to appeal was granted on 29 August 2006, see Decision on Request to Certify an Appeal against Decision on Assignment of Counsel, 29 August 2006.