



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: 23 April 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Acting Registrar: Mr John Hocking

Decision of: 23 April 2009

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION ON FINANCING OF ACCUSED'S DEFENCE

The Office of the Prosecutor

Mr Daryl Mundis
Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

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”) is seized of Submission No. 411 of Vojislav Šešelj (“Accused”) to secure the financing of his defence, filed on 3 February 2009 (“Request”).¹ On 16 March 2009, the Registry tendered its submission pursuant to Rule 33(B) of the Rules of Procedure and Evidence (“Rules”).²

I. PROCEDURAL BACKGROUND

2. The Chamber recalls that the issue of financing the Accused’s defence has been the subject of numerous submissions file by the Accused³ and the Registry⁴ since the start of the case.

¹ BCS original of which the English translation is entitled: Submission No. 411: Request for the Trial Chamber to Secure the Financing of Professor Vojislav Šešelj’s Defence, dated 15 January 2009, and filed on 3 February 2009.

² Registry Third Submission Pursuant to Rule 33(B) of the Rules Regarding the Financing of the Accused’s Defence, 16 March 2009 (“Submission”).

³ See for example, BCS original of which the English translation is entitled Submission number 227: Request for Reimbursement of Costs for the Preparation of Defence in 2006, 22 December 2006 (“Submission 227”); BCS original of which the English translation is entitled Submission number 228: Request for the Registry to Calculate the Overall Costs of Professor Vojislav Šešelj’s Defence over the Four-Year Pre-Trial Period, 22 December 2006 (“Submission 228”); BCS original of which the English translation is entitled Submission number 229: Request for Reimbursement of Costs for the Preparation of Defence in the Period 2003 to 2006, 22 December 2006 (“Submission 229”); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, BCS original of which the English translation is entitled Submission number 236: Appeal by Professor Vojislav Šešelj Against the Registrar’s Letter/Decision of 19 December 2006, dated 5 January 2007, filed on 22 January 2007 (“Appeal against Decision of 19 December 2006”); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, BCS original of which the English translation is entitled Submission number 246: Appeal by Professor Vojislav Šešelj Against the Decision of the Registrar of 28 December 2006, dated 9 January 2007, filed on 19 February 2007 (The Chamber notes that this appeal refers incorrectly to a decision of 28 December 2006 whereas the impugned decision is dated 4 January 2007, (“Appeal against the Decision of 4 January 2007”)); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, BCS original of which the English translation is entitled Submission number 248: Appeal of Professor Vojislav Šešelj Against the Decision of the Registrar of 9 February 2007, dated 22 February 2007, filed on 2 mars 2007; BCS original of which the English translation is Submission number 294: Professor Vojislav Šešelj’s Motion for a Decision by Trial Chamber III on Financing his Defence in Accordance with the Statute, 4 June 2007, dated 4 June 2007, English version filed on 14 June 2007, French version filed on 2 July 2007 (“Submission of 14 June 2007”); BCS original of which the English translation is entitled Submission number 378: Professor Vojislav Šešelj’s Motion for Payment of Defence Costs, 18 February 2008 (“Submission of 18 February 2008”).

⁴ Submission, paras 5-21, that refers to the earlier submissions made by the Registry entitled Registry Submission Pursuant to Rule 33 of the Rules of Procedure and Evidence Regarding Vojislav Šešelj’s Request for an Order to the Registry to Pay the Costs of his Defence, 31 January 2006; Registry Submission Pursuant to Rule 33(B) of the Rules of Procedure and Evidence Regarding Vojislav Šešelj’s Appeal Against the Registry Decision of 19 December 2006, 8 February 2007; Registry

3. Following the decision of the Appeals Chamber of the Tribunal (“Appeals Chamber”) of 8 December 2006 that restored the right of the Accused to self-representation,⁵ the Registry, in a letter dated 19 December 2006, gave details of the nature and scope of the Accused’s defence costs that could be covered by the Tribunal (“Decision of 19 December 2006”), recalling that the indigent status of the Accused had not yet been established and he had not requested the assignment of a lawyer and, consequently, the Accused was not formally eligible for legal aid from the Tribunal.⁶

4. In addition, on 22 December 2006, the Accused simultaneously submitted three requests to the Registry for reimbursement of costs incurred since 2003 in the preparation of his defence, amounting to US\$6,395,000.⁷ The Registry rejected these three requests on 4 January 2007 since the Tribunal’s legal aid system is conditional upon an accused establishing indigence and upon counsel having been designated or appointed.⁸

5. The Accused appealed to the President against the Decision of 19 December 2006 and the Decision of 4 January 2007.⁹ On 12 March 2007, the President stated that he did not have jurisdiction to rule on the Appeal against the Decision of 19 December 2006 and invited the Accused to submit his arguments to the Trial Chamber seized of the case.¹⁰ For the same reasons, the President dismissed the Appeal against the Decision of 4 January 2007 made before the Trial Chamber seized of the case.¹¹

Submission Regarding Vojislav Šešelj’s Appeal Against the Registrar’s Decisions of 28 December 2006 and 9 February 2007, 9 March 2007; Registry’s Submission Pursuant to Rule 33(B) of the Rules Regarding Vojislav Šešelj’s Motion for a Decision by the Trial Chamber on Financing his Defence, 29 June 2007. The Chamber also refers to the detailed procedural background in the decision of the pre-trial judge, *see Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, *Décision relative au financement de la défense de l’Accusé*, 30 juillet 2007 (“Decision of 30 July 2007”), paras 3-16.

⁵ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.4, Decision on Appeal Against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, 8 December 2006 (“Decision of 8 December 2006”), para. 28.

⁶ Decision of 19 December 2006, p. 1.

⁷ Submission 227, Submission 228, Submission 229.

⁸ Registry Decision, 4 January 2007 (“Decision of 4 January 2007”).

⁹ Appeal against the Registry’s Decision of 19 December 2006; Appeal of the Decision of 4 January 2007.

¹⁰ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Appeal Against Registry Decision of 19 December 2006, 12 March 2007 (“Decision of the President of 12 March 2007”), para. 6.

¹¹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Appeals Against Decisions of the Registrar of 4 January 2007 and 9 February 2007, 25 April 2007 (“Decision of the President of 25 April 2007”), para. 12.

6. The Accused then filed a motion with the Pre-trial Judge.¹² In his decision of 30 July 2007, the Pre-trial Judge laid out the principle of the Tribunal financing the costs of the defence of an accused who is representing himself, under certain conditions,¹³ and consequently ordered that a system be put into place for the Accused for the application of legal aid,¹⁴ pursuant to the Directive on the Assignment of Defence Counsel (“Directive”).¹⁵ The Chamber also appealed to the Accused to submit to the Registry any useful information he might have on his indigence.¹⁶

7. In his Decision of 30 October 2007,¹⁷ the Pre-trial Judge noted that the provisions set forth in the Decision of 30 July 2007 were not implemented because the Accused refused to comply with the formalities set forth by the Registry and to furnish the evidence it requested, and it once again invited the Accused to provide the documents requested by the Registry so that his indigent status could be evaluated.¹⁸

8. The issue was brought up again at the hearing of 13 February 2008, during which the Chamber suggested that the Accused file another request with the Registry.¹⁹ On 18 February 2008, the Accused sent the Registry a Motion for disbursement of costs incurred in the preparation of his defence, in which he claimed that the Registry was obliged to reimburse all expenditures incurred during the pre-trial phase of the case and cover the financing of his defence expenditures during the trial.²⁰ He also asked the Registry to inform him about all the amounts paid to the defence teams in all the other cases financed by the Tribunal, including the costs incurred by the appointment of standby counsel previously assigned in his case.²¹

¹² Submission of 14 June 2007.

¹³ Decision of 30 July 2007, paras 56-65.

¹⁴ *Ib.* para. 66.

¹⁵ No. 1/94 (IT/73/REV. 11), 11 July 2006.

¹⁶ Decision of 30 July 2007, para. 66.

¹⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision Implementing the Financing of the Accused, 30 October 2007 (“Decision of 30 October 2007”).

¹⁸ Decision of 30 October 2007, pp. 1-2: *see also* Submissions, paras 12-14, that provides supplementary information on the contacts between the Accused and the Registry between the Decision of 30 July 2007 and the Decision of 30 October 2007 and refers to paragraph 14 of a letter sent by the Registry on 28 September 2007 (“28 September 2007 Letter”) offering a detailed overview of the financial situation of the Accused and asking him to provide supplementary and/or updated information to evaluate his indigent status.

¹⁹ Hearing of 13 February 2008, Transcript in French (T(F)) 3503; *see also* Submission, paras 16-17, that provides supplementary information on the meetings held between the Registry and the Accused on 12 February 2008 and on 14 February 2008 to try and solve this issue.

²⁰ Motion of 18 February 2008, p. 4.

²¹ *Ib.*, p. 3.

9. In its Decision of 4 March 2008 (“Decision of 4 March 2008”), the Registry reiterated that it would not authorize the financing of the Accused’s defence until he fulfilled the conditions set forth in the Decision of 30 July 2007.²² The Registry also noted that the financial aid requested by the Accused could be granted only from the Decision of 30 July 2007 onwards, and that, consequently, the Accused could not receive any retroactive payments, the latter not falling under the Decision of 30 July 2007 and not foreseen or allowed but the rules in force at the Tribunal.²³

10. The Accused referred to the Decision of 4 March 2008 at the hearing of 11 March 2008, noting that he would no longer insist on this issue.²⁴

II. PRESENTATION OF ARGUMENTS

A. Arguments presented in the Request

11. In his Request, the Accused requested that the Chamber order the Registry to calculate the costs of defence in the pre-trial phase of the proceedings that began on 24 February 2003 and approve the disbursement of funds in accordance with the Accused’s right to have his defence financed by the Tribunal, to calculate and approve the disbursement of funds to cover the costs of defence during the trial phase of the proceedings until the Prosecution has finished the presentation of its case, and approve the disbursement of funds per months for the financing of his defence during the trial phase of the proceedings.²⁵

12. The Accused recalls that at the hearing of 8 January 2009, he brought up the as yet unresolved issue of the financing of his defence and stated that since he was unable to work with his legal advisors and prepare his defence, he would not present his case.²⁶ The Accused submits in other words that by refusing to grant him financial aid, the Registry is jeopardizing his right to prepare and organize his defence.²⁷

²² Decision of 4 March 2007, p. 2.

²³ Decision of 4 March 2007, p. 1.

²⁴ Hearing of 11 March 2008, T(F). 4705-4708.

²⁵ Request, pp. 5-6.

²⁶ Request, p. 2; *see also* p. 5. The Accused recalls in addition that he consequently instructed Mr Krsić to prepare his closing arguments to present them at the end of the Prosecution case.

²⁷ Request, p. 4-5.

13. The Accused submits that since the trial commenced, he has on several occasions orally apprised the Trial Chamber that the Registry was not complying with the Decision ordering the financing of his defence with ICTY resources.²⁸ The Accused claims that he fulfilled all his obligations regarding the provision of information on his financial situation as early as the end of 2003,²⁹ that he fulfils all the conditions to obtain the financing needed for his defence and that the Registry's interpretation is tendentious and arbitrary.³⁰ He recalls that, at the time, the only problem with regard to financing was the fact that he did not have a counsel.³¹ Since this problem was resolved when his right to conduct his own defence was restored to him,³² the Accused maintains that the Registry only had to specify which amounts would be allotted for financing his defence.³³ The Accused adds that the Registry also arranged for this information provided by the Accused to be checked, and used the services of the relevant organs in the Republic of Serbia.³⁴

14. The Accused then reiterates his request for information on the defence costs in all other cases before the Tribunal,³⁵ the amount of United Nations resources that the Tribunal used to finance the defence costs in all other cases before the Tribunal,³⁶ the costs incurred by the Office of the Prosecutor in the present proceedings,³⁷ and the total amount of funds the Registry has hitherto paid to the standby counsel who were appointed earlier in the case.³⁸

B. Submissions of the Registry

15. In its Submissions, the Registry states that the Accused failed to establish that he lacked the means to pay for this defence and did not cooperate with the Registry's inquiry into his means.³⁹ The Registry notes that in accordance with the Decision on

²⁸ Request, p. 3.

²⁹ Request, p. 3.

³⁰ Request, p 3, 5.

³¹ Request, p 3.

³² Decision of 8 December 2006, para. 28.

³³ Request, p. 3.

³⁴ Request, p. 3.

³⁵ Request, p. 4.

³⁶ Request, p. 4.

³⁷ Request, p. 4.

³⁸ Request, p. 5.

³⁹ Submission, para. 26.

Financing of 30 July 2007, one of the basic principles of the Directive that applies to a self-represented accused requesting International Tribunal funding for his defence is that only an indigent accused who submits a declaration of means, pursuant to Article 7(B) of the Directive, can benefit from International Tribunal funding and that, on this basis, and pursuant to Article 9 of the Directive, will the Registry undertake an inquiry into his means.⁴⁰ The Registry also notes that the Decision of 30 July 2007 upheld that, pursuant to Article 8 of the Directive, the burden lies upon the Accused to show that he is indigent, and to do this, he must disclose information and cooperate with the Registry's inquiry into his means.⁴¹

16. In the case in question, the Registry submits that the Accused has failed to provide all requisite information and, despite several reminders from the Registry and the Decision of 30 October 2007, the 28 September 2007 letter has remained unanswered.⁴² The Registry notes that despite the refusal of the Accused to provide certain information,⁴³ it attempted to gather the information needed through the relevant national authorities.⁴⁴ According to the Registry, much of the information sought, for example, bank account details, royalties derived from publishing the Accused's books, details on contracts and payments to the Accused or his household members potentially obtained through his private company or his political party, cannot be obtained without the Accused's cooperation.⁴⁵

17. With regard to retroactive payment for expenditures in pre-trial, the Registry notes that such a payment cannot be made since neither the assignment of the defence

⁴⁰ Submissions, para. 24. The Registry also notes that the assets of his spouse or other household members will only be taken into account if they constitute marital property or if there is evidence of a pooling of resources between the accused and the owner of such assets, or if the accused is proven to be the true owner of an asset registered in a third party's name. See also Article 10(A) of the Directive that stipulates:

"The Registrar shall determine whether and to what extent the suspect or accused is able to remunerate counsel by taking into account means of all kinds of which the suspect or accused has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds, or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the spouse of a suspect or accused, as well as those of persons with whom he habitually resides, provided that it is reasonable to take such means into account."

⁴¹ Submission, para. 25.

⁴² Submission, para. 26.

⁴³ Submission, para. 26.

⁴⁴ Submission, para. 27.

⁴⁵ Submission, para. 27.

team members in pre-trial nor the costs incurred during this period were authorised in advance.⁴⁶

18. The Registry notes, in addition, that the information on payments made to other defence teams in other cases is not relevant in this case and, at any rate, it remains confidential.⁴⁷ The same is true of information requested by the Accused on the costs incurred by the Office of the Prosecutor in these proceedings, concerning which the Registry recalls that the Appeals Chamber and the European Court of Human Rights have held that the principle of equality of arms does not require that Defence and Prosecution have equal resources.⁴⁸

19. The Registry notes, nonetheless, that it already gave the Accused BCS-language copies of the Policies of the legal aid system for the trial and of the Remuneration Scheme for indigent self-represented accused, issued on 28 September 2007.⁴⁹ The Registry notes that it explained to the Accused that, under this legal aid system, there are pre-established legal aid allotments which correspond to the complexity of each case and that funding for associates assigned to a self-represented accused is not comparable to that paid to counsel for represented accused.⁵⁰ The Registry adds that this differentiated approach was already approved by the Pre-trial Judge in the Decision of 30 July 2007⁵¹ and that a clear distinction between legal aid and funding for self-represented accused was subsequently confirmed by the Appeals Chamber in the *Krajišnik* case.⁵²

20. The Registry notes, in addition, that payments made to the standby counsel previously assigned to the Accused's case have no bearing on the funding that may ultimately be provided for the Accused's defence, should he establish his indigence, since payments made to court-appointed lawyers are not made under the legal aid scheme.⁵³ The Registry notes in this respect that it already offered to provide the

⁴⁶ Submission, para. 29.

⁴⁷ Submission, para. 30.

⁴⁸ Submission, para. 34.

⁴⁹ Submission, para. 31-32.

⁵⁰ Submission, para. 31-32.

⁵¹ Decision of 30 July 2007, para. 55.

⁵² Submission, para. 32; see *The Prosecutor v. Krajišnik*, Case No. IT-00-39-A, Decision on Krajišnik's Request and on Prosecution Motion, 11 September 2007, para. 42; see also *The Prosecutor v. Karadžić*, Case No. IT-95-5/18-PT, Decision on Accused Motion for Adequate Facilities and Equality of Arms: Legal Associates, 28 January 2009 ("*Karadžić* Decision"), para. 32.

⁵³ Submission, para. 33.

Accused with the total amount of remuneration paid to court-appointed counsel in his case, but that it refused to disclose payments made to individuals, which is confidential information.⁵⁴

III. DISCUSSION

21. The Chamber recalls in limine that it has jurisdiction to examine the decisions of the Registry on issues relating to an accused's exercise of the right to self-representation under the Statute of the Tribunal that are expressly for a Chamber to decide in light of its inherent power and duty to ensure the fair and expeditious management of its proceedings.⁵⁵

22. There is no contention either that the burden of proof of indigence weighs upon the Accused, as set forth in Article 8 of the Directive and in the decisions of the Pre-trial Judge, rendered on 30 July and 30 October 2007.⁵⁶ The Chamber notes that, in his Decision of 30 October 2007, the Pre-trial Judge affirmed that the Registry, as an organ managing the allotment of international public funds to indigent accused, "is obliged under the terms of the Rules and the Directive to have in its possession the essential documents needed to properly determine the Accused's indigent situation" and that it is consequently incumbent upon the Accused "to provide the Registry with this essential information."⁵⁷ This principle has been reiterated in paragraph 2.1 of the Remuneration Scheme for indigent self-represented accused that was adopted by the Registry to implement the principles set forth in the *Krajišnik* Decision.⁵⁸

23. The Chamber notes in this connection that the Accused does not show that he has provided the Registry with all the documents needed to prove that he does not have the financial means to ensure his defence and, as a result, to obtain financial aid from the Tribunal, it holds consequently that as long as the information required in the

⁵⁴ Submission, para. 33.

⁵⁵ Decision of the President of 12 March 2007, para. 6; Decision of the President of 25 April 2007, para. 12; see also *Karadžić* Decision, para 12; *The Prosecutor v. Vidoje Blagojević*, Case No. IT-02-60-AR73.4, public version redacted of the reasons for Decision on Appeal by Vidoje Blagojević to Replace his Defence Team, 7 November 2003, para. 7.

⁵⁶ Decision of 30 July 2007, paras 57-59; Decision of 30 October 2007, pp. 1-2.

⁵⁷ Decision of 30 October 2007, pp. 1-2.

⁵⁸ *Krajišnik* Decision, para. 42, that notes in this connection: "As always, the Registry should disburse any such payments in accordance with applicable UN Rules and Regulations," *ib.*

28 September 2007 letter has not been provided, the Chamber cannot instruct the Registry to disburse the funds requested by the Accused to prepare his defence.

24. In addition, taking account of the fact that the Accused has not given proof of his indigent status, the Chamber notes that the issue of retroactive payment for expenditures allegedly incurred in pre-trial need not be dealt with.

25. As to the information requested by the Accused concerning funds disbursed by the Tribunal for costs incurred by the appointment by the Chamber of standby counsel previously assigned in his case, the Chamber notes that the Registry already offered to provide the Accused with the total amount of remuneration paid to court-appointed counsel, but that it refused to disclose payments made to individuals, which is confidential information. The Chamber nonetheless holds that the relevance of the information is questionable to the extent that the status of standby counsel assigned by the Chamber and of the legal associates of a self-represented accused are different⁵⁹ and, as a result, the calculation of their respective remuneration is based on different criteria.

26. With regard to the requests for information on payments made by the Tribunal to other defence teams, the Accused does not explain why obtaining such information would be of service to him. The Chamber holds, at any rate, that this information is not relevant to solving the present dispute, which is about the Accused providing documents in support of his request for financial aid. The Chamber considers that, for similar reasons, it cannot accede to requests for information on the costs of the Prosecution case. It also notes that, as the Appeals Chamber of the Tribunal has previously held, the principle of equality of arms does not necessarily mean having equal financial and/or personal resources.⁶⁰

⁵⁹ See in this connection, *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Prosecution Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence, 9 May 2003, para. 27-28, 30.

⁶⁰ *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Appeals Judgement, 17 December 2004, para. 176; see also *The Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-A, Appeals Judgement, 28 November 2007, para. 220; *Case of Steel and Morris v. The United Kingdom*, European Court of Human Rights, No. 68416/01, Judgment of 15 February 2005, referring to a civil case but set forth in general terms in paragraph 62, specifying that [...] it is not incumbent on the State to seek through the use of public funds to ensure total equality of arms between the assisted person and

DISPOSITION

27. In accordance with Rule 54 the Rules, the Chamber **DENIES** the Request and **INVITES** the Accused to furnish the documents requested by the Registry so that his indigent status can be evaluated.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of January 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the adversary.