



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: 10 February 2010  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

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

**Registrar:** Mr John Hocking

**Decision of:** 10 February 2010

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

***PUBLIC DOCUMENT***

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**DECISION ON ORAL REQUEST OF THE ACCUSED FOR ABUSE OF  
PROCESS**

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**The Office of the Prosecutor**

Mr Mathias Marcussen

**The Accused**

Mr Vojislav Šešelj

## 1. INTRODUCTION

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”), is seized of an oral request from Vojislav Šešelj (“Accused”) to terminate his proceedings on account of the abuse of process committed by the Office of the Prosecutor (“Prosecution”) (“Request”).<sup>1</sup>

## II. PROCEDURAL BACKGROUND

2. During the hearing of 20 October 2009, the Accused presented the Chamber with an oral request based on the abuse of process doctrine and aimed at terminating his proceedings on account of the serious violations of his rights<sup>2</sup> if his trial were not to resume within ten days.<sup>3</sup> During the same hearing, the Prosecution opposed the various allegations of the Accused and requested the right to submit a written response to the Request, on account of its importance.<sup>4</sup> By way of an oral decision of 20 October 2009, the Chamber granted the Prosecution 15 days in which to file a written response to the Request.<sup>5</sup>

3. On 6 November 2009, the Prosecution filed its response, in which it requested the dismissal of the Request (“Response”).<sup>6</sup>

4. During the hearing of 24 November 2009, the Chamber informed the parties of the resumption of the proceedings commencing on 12 January 2010,<sup>7</sup> in accordance with the decision rendered on 23 November 2009 (“Consolidated Decision”).<sup>8</sup>

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<sup>1</sup> Hearing of 20 October 2009, T (F) pp. 14756-14762.

<sup>2</sup> *Id.*, T (F) p. 14760.

<sup>3</sup> *Id.*, T (F) pp. 14762, 14764, 14767.

<sup>4</sup> *Id.*, T (F) pp. 14765-14766.

<sup>5</sup> *Id.*, T (F) p. 14783.

<sup>6</sup> “Response to the Accused’s Oral Motion for Termination of Proceedings Pursuant to the Abuse of Process Doctrine”, confidential and *ex parte*, 4 November 2009; redacted public version filed on 6 November 2009 (“Response”).

<sup>7</sup> Hearing of 24 November 2009, T (F) pp. 14789-14790.

<sup>8</sup> “Consolidated Decision on Assignment of Counsel, Adjournment and Prosecution Motion for Additional Time with Separate Opinion of Presiding Judge Antonetti in Annex”, confidential and *ex parte*, 23 November 2009; redacted confidential version filed on 23 November 2009; redacted public version filed on 24 November 2009 (“Consolidated Decision”).

Nevertheless, the Accused requested the right to reply to the Prosecution.<sup>9</sup> The Chamber granted his request by way of the oral decision of 24 November 2009.<sup>10</sup> On 18 December 2009, the Accused filed his reply, together with a request for permission to exceed the authorised word limit.<sup>11</sup> In his Reply, the Accused requested that the Chamber either ensure that his trial was fair and expeditious or dismiss all the charges against him.<sup>12</sup>

5. On 6 January 2010, the Prosecution filed a request that the Chamber take into consideration its sur-reply in response to the new arguments presented by the Accused in his Reply.<sup>13</sup>

### III. ARGUMENTS OF THE PARTIES

6. In his Request, the Accused asks that the Chamber terminate his proceedings on account of the serious violations of his rights of the defence, on the basis of the abuse of process doctrine,<sup>14</sup> unless the Prosecution is ready to continue the proceedings and hear the remaining Prosecution witnesses.<sup>15</sup> The Accused puts forward several arguments to justify his Request, to which the Prosecution responds in its written submissions.

#### A. With regard to the alleged agreement between Carla Del Ponte and Zoran Đinđić

7. First of all, the Accused submits that the Indictment against him is a result of an agreement between Carla Del Ponte, the former Prosecutor of the Tribunal, and Zoran Đinđić, the former Prime Minister of Serbia, which led to his arrest for political motives. According to him, the Prosecution has always been aware that he was not

<sup>9</sup> Hearing of 24 November 2009, T (F) p. 14819.

<sup>10</sup> *Id.*, T (F) pp. 14819-14820.

<sup>11</sup> Translation of BCS original entitled: "Submission 437: Reply of Professor Vojislav Šešelj to the Response to the Accused's Oral Motion for Termination of Proceedings Pursuant to the Abuse of Process Doctrine", 29 December 2009 ("Reply").

<sup>12</sup> Reply, para. 26.

<sup>13</sup> "Prosecution Request for Leave to File Sur-reply and Sur-reply", 6 January 2010 ("Sur-reply").

<sup>14</sup> Hearing of 20 October 2009, T (F) p. 14760.

<sup>15</sup> Hearing of 20 October 2009, T (F) p. 14762.

involved in any war crime, but accused him in order to remove him from Serbian political life.<sup>16</sup>

8. The Prosecution notes, however, that this issue was already the subject of a request from the Accused<sup>17</sup> that the Chamber rejected by way of a decision on 18 September 2008.<sup>18</sup> For this reason, the Prosecution concludes that this claim<sup>19</sup> should be dismissed.

9. Nevertheless, the Accused considers that the publication by the former Prosecutor of her book, *The Hunt: Me and War Criminals* constitutes a new fact that would justify the Chamber's reconsideration of its decision.<sup>20</sup>

**B. With regard to alleged potential witness interference by the Prosecution**

10. The Accused alleges that the Prosecution violated his procedural rights by interfering with potential witnesses by bartering with them or offering them bribes or by intervening to help them obtain permanent residence abroad in exchange for false testimony.<sup>21</sup>

11. The Prosecution notes in its Response that even these allegations were the subject of requests submitted by the Accused that have already been adjudicated by the Chamber.<sup>22</sup> The Prosecution argues that the Accused does not present in his Request any new reason that would justify a reconsideration of the Chamber's decisions.<sup>23</sup>

<sup>16</sup> Hearing of 20 October 2009, T (F) pp. 14757-14758.

<sup>17</sup> Translation of the BCS original entitled: "Motion for Trial Chamber III to Issue a Decision Dismissing All the Charges Brought by the Prosecution against Professor Vojislav Šešelj", 22 May 2008.

<sup>18</sup> "Decision on Motion by the Accused to Dismiss All Charges against him (Submission 387) and its Addendum (Submission 391)", 18 September 2008 ("Decision of 18 September 2008").

<sup>19</sup> Response, para. 5.

<sup>20</sup> Reply, para. 6.

<sup>21</sup> Hearing of 20 October 2009, T (F) pp. 14756-14757, 14762.

<sup>22</sup> Response, para. 7, referring to the "Order Regarding Mr Šešelj's Motion for Contempt Proceedings", 15 May 2007; "Decision on the Accused's Motion for Review of the Order of 15 May 2007", 19 July 2007; "Decision on Motions by the Prosecution and the Accused to Instigate Contempt Proceedings Against Ms Dahl (from the Office of the Prosecutor) and Mr Vučić (Associate of the Accused)", 10 June 2008; "Decision on the Accused's Submissions 382 and 386 to Instigate Contempt Proceedings Against Paolo Pastore-Stocchi", confidential and *ex parte*, 18 November 2008.

<sup>23</sup> Response, para. 8.

**C. With regard to evidence presented by the Prosecution**

12. The Accused further claims that the Prosecution is not in possession of sufficient evidence against him that would justify the continuation of the proceedings.<sup>24</sup>

13. The Prosecution submits, however, that it has already tendered extensive evidence and that the Accused's opinion of this evidence stems from a highly personal approach. The Prosecution alleges, moreover, that the issue of the assessment of the probative value of the evidence presented by the Prosecution is premature and that it is the Chamber who will determine this point during the procedures imposed by Rule 98 *bis* of the Rules of Procedure and Evidence of the Tribunal ("Rules").<sup>25</sup>

**D. With regard to the amount of time the Accused has spent in detention**

14. Finally, the Accused refers to the length of both his detention and his trial, which he deems excessive. The Accused recalls notably that he waited five years before the commencement of his trial<sup>26</sup> and submits that his detention of six years and eight months whilst awaiting judgement exceeds the standard of reasonable limit.<sup>27</sup> According to the Accused, the numerous delays which have hindered his proceedings are all the fault of the Prosecution, which has notably changed the type and number of evidence it has presented, requested additional time for the presentation of its case, asked for Judge Harhoff to be recused, attempted to impose counsel on the Accused, requested several court adjournments and amended the Indictment on several instances.<sup>28</sup> The Accused considers that the Prosecution breached its obligations of rapidity and vigilance incumbent upon it under the jurisprudence of the European Court of Human Rights ("ECHR")<sup>29</sup> and claims that it multiplied the delays, knowing that he was not responsible for any crime, in order to prolong his detention at least

<sup>24</sup> Hearing of 20 October 2009, T (F) p. 14761.

<sup>25</sup> Response para. 9.

<sup>26</sup> Hearing of 20 October 2009, T (F) p. 14756.

<sup>27</sup> *Id.*, T (F) pp. 14756, 14760.

<sup>28</sup> *Id.*, T (F) pp. 14770-14771; Reply, paras 11, 16, 24.

<sup>29</sup> Reply, para. 15, referring to *Jablonski v. Poland*, HUDOC No. 33492/96, ECHR, Judgement of 21 December 2000.

until the closing of the Tribunal.<sup>30</sup> The Accused considers that the excessive length of his proceedings constitutes a sufficient violation of his rights that would justify the implementation of the abuse of process doctrine, which would allow the Chamber to terminate his proceedings.<sup>31</sup>

15. The Prosecution notes, first of all, that the matter of the Accused's detention was already the subject of a request to which the Chamber replied.<sup>32</sup> It recalls furthermore that Article 21 (4) (c) of the Statute of the Tribunal ("Statute") does not prohibit delays in the proceedings but only those considered excessive on account of the conduct of the parties and the circumstances surrounding the breaks in the continuity of the proceedings.<sup>33</sup> It considers, moreover, that there is no absolute temporal time limit applicable to the right to trial without undue delay and that the excessive nature of the length of detention must consequently be assessed on a case-by-case basis.<sup>34</sup> In this connection, the Prosecution recalls that the charges against the Accused are extremely serious and emphasises the number and complexity of the factual and judicial issues that have emerged during the proceedings and concludes that in this case, the length of the proceedings does not violate the obligation to guarantee the Accused a trial without undue delay.<sup>35</sup> It considers, moreover, that the various delays which have extended the length of the proceedings are in large part attributable to the behaviour of the Accused<sup>36</sup> and that, when the Prosecution formulated requests asking for the adjournment of the proceedings, it was only with

<sup>30</sup> Hearing of 20 October 2009, T (F) p. 14758.

<sup>31</sup> *Id.*, T (F) p. 14760.

<sup>32</sup> Response, para. 6, referring to *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Request of the Accused for Trial Chamber II to Issue an Order for the Trial to Commence by 24 February 2006 or an Order to Abolish Detention, Dismiss the Indictment and Release Dr Vojislav Šešelj", 12 December 2005.

<sup>33</sup> *Id.*, para. 12 referring to *The Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-PT, "Decision on Defence Motion for Stay of Proceedings", 3 June 2005, para. 37; *The Prosecutor v. Prosper Mugiraneza*, Case No. ICTR-99-50-AR73, "Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber Decision of 2 October Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief", 27 February 2004, p. 2.

<sup>34</sup> Response, para. 12, citing *The Prosecutor v. Ferdinand Nihimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 1074.

<sup>35</sup> *Id.*, para. 16, referring to *The Prosecutor v. Arsène Shalom Ntahobali*, Case No. ICTR-98-42-T, "Decision on Ntahobali's Motion for Stay of Proceedings for Undue Delay", 26 November 2008; *The Prosecutor v. Ferdinand Nihimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, paras 1075-1077; *Ventura v. Italy*, App. No. 7438/76, Commission Report of 15 December 1980; *Ferrari-Bravo v. Italy*, App. No. 9627/81, Commission Report of 14 March 1984; *Boddaert v. Belgium*, App. No. 12919/87, ECHR, Judgement of 12 October 1992, paras 35, 39-40; *W. v. Switzerland*, App. No. 14379/88, ECHR, Judgement of 26 January 1993.

<sup>36</sup> *Id.*, paras 6, 17.

the aim of preserving the fairness of the proceedings.<sup>37</sup> As such, the Prosecution recalls that in its decision to adjourn proceedings, the Chamber considered “by a majority that its duty to preserve the integrity and fairness of the proceedings must prevail over time considerations in light of the exceptional circumstances of the case”.<sup>38</sup>

16. In his Reply, the Accused argues that contrary to what the Prosecution claims, there is a “critical threshold” concerning the length of judicial proceedings which, if exceeded, puts at risk democracy and the rule of law.<sup>39</sup> He refers furthermore to several standards of international law according to which an unreasonable lengthy detention is considered a violation of human rights.<sup>40</sup>

17. The Accused notes, moreover, that proceedings which were the subject of appeals before the ECHR and which the Prosecution uses to illustrate the fact that this trial does not exceed the threshold of reasonable delay, were all terminated at the time of the submission of the cases to the ECHR and that their length included the exhaustion of all national legal remedies. On the contrary, the trial of the Accused is still only at the stage of the presentation of the Prosecution case.<sup>41</sup> The Prosecution opposes him, nevertheless, with regard to the *Boddaert v. Belgium* case in which the litigation about undue delay occurred concurrently with the investigation and the trial of the applicant.<sup>42</sup>

#### IV. APPLICABLE LAW

18. Under Article 21 of the Statute, the accused is entitled to a certain number of guaranties, including notably the right to be tried without undue delay and the right to a fair trial.

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<sup>37</sup> *Id.*, paras 18-20.

<sup>38</sup> *Id.*, para. 21.

<sup>39</sup> Reply, para. 12, referring to Mr Fabri, *Selected Issues of Judicial Administration in a Comparative Prospective; the Challenge of Change for European Judicial Systems: Developing a Public Administration Perspective*, The Netherlands, IOS Press, 2000.

<sup>40</sup> *Id.*, paras 4-5, 22-23, referring to Ashworth and Strange, “Criminal Law and Human Rights”, *European Human Rights Law Review*, Issue 2, Thomson and Sweet & Maxwell, London, 2004, pp. 127-129.

<sup>41</sup> Reply, paras 13, 17, 20.

<sup>42</sup> Sur-reply, para. 5.

19. According to jurisprudence, where the violation of the accused's rights is such as to jeopardize the integrity of the Tribunal, the Judges may find that there has been an abuse of process and decline to exercise their jurisdiction by terminating the proceedings without adjudicating the accused.<sup>43</sup>

20. Jurisprudence deriving from the *Jean-Bosco Barayawiza v. The Prosecutor* case ("*Barayawiza* Judgement") specifies that the abuse of process doctrine does not require the identification of the party responsible for the alleged violations of the accused's rights.<sup>44</sup>

21. In the case of *The Prosecutor v. Radovan Karadžić* ("*Karadžić* Case"), the Tribunal Appeals Chamber found that only two situations may be considered as constituting a serious and egregious violation of the accused's rights: (i) where a fair trial for the accused is impossible, usually for reasons of delay; and (ii) where the trial of the accused is marred by procedures which contravene the court's sense of justice.<sup>45</sup>

22. The Appeals Chamber specified that only in exceptional cases of violations of human rights may a court be justified in declining to exercise its jurisdiction. In most cases, such a remedy would indeed be disproportionate compared to the prejudice suffered by the Accused.<sup>46</sup> Violations of the rights of the defence which may be considered sufficiently serious to allow the Chamber to use its discretionary power to terminate proceedings are determined, therefore, using a particularly high threshold. On account of the higher interests inherent in the proceedings of persons accused of

<sup>43</sup> In this sense, the *Barayawiza* Judgement, para. 74: "It is a process by which Judges may decline to exercise the court's jurisdiction in cases where to exercise that jurisdiction in light of serious and egregious violations of the accused's rights would prove detrimental to the court's integrity".

<sup>44</sup> *Jean-Bosco Barayawiza v. The Prosecutor*, Case No. ICTR-97-19-AR72, Judgement, 3 November 1999, para. 75 (citing *Bell v. DPP of Jamaica*, [1985] 2 All E.R. 585): "under the abuse of process doctrine, courts have an inherent power to decline to adjudicate a case which would be prejudicial to one of the parties as the result of undue delay" ("*Barayawiza* Judgement"), para. 73.

<sup>45</sup> *The Prosecutor v. Radovan Karadžić* ("*Karadžić* Case") Case No. IT-95-5/18-AR73.4, original entitled: "Decision on Karadžić's Appeal of Trial Chamber's Decision on Alleged Holbrooke Agreement", 12 October 2009 ("*Karadžić* Decision"), para. 45: "The Appeals Chamber specified that the doctrine of abuse of process may be relied on by a court, as a matter of discretion, in two distinct situations: (i) where a fair trial for the accused is impossible, usually for reasons of delay; and (ii) where in the circumstances of a particular case, proceeding with the trial of the accused would contravene the court's sense of justice, due to pre-trial impropriety or misconduct. The applicable standard was further clarified by stating that a court may discretionally decline to exercise jurisdiction 'where to exercise that jurisdiction in light of serious and egregious violations of the accused's rights would prove detrimental to the court's integrity'. See also *Barayawiza* Judgement, paras 74, 77.

serious crimes of international law, however, the jurisprudence of the Appeals Chamber does not allow the abuse of process doctrine to be applied to less serious facts.<sup>47</sup>

23. Undue delay may not justify the application of the abuse of process doctrine unless it renders impossible the right of the accused to a fair trial.<sup>48</sup>

## V. DISCUSSION

24. With regard to the first argument on which the Accused bases his Request, namely the allegation that his indictment was the result of an agreement between the former Prosecutor of the Tribunal, Ms Carla Del Ponte, and the former Prime Minister of Serbia, Mr Zoran Đinđić,<sup>49</sup> the Chamber wishes to recall that it was already the subject of a request by the Accused<sup>50</sup> to which the Chamber responded by way of the Decision of 18 September 2008, after the publication of Ms Del Ponte's book. The Accused does not, therefore, present any new fact in his Request that would justify the Chamber's reconsideration of that decision.

25. The second argument of the Accused, according to which the Prosecution had put pressure on witnesses,<sup>51</sup> has also been the subject of requests from the Accused<sup>52</sup> to which the Chamber responded.<sup>53</sup>

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<sup>46</sup> *Karadžić* Decision, para. 46.

<sup>47</sup> *Karadžić* Decision, para. 47.

<sup>48</sup> *Karadžić* Decision, para. 45. See also *Barayagwiza* Judgement, para. 77.

<sup>49</sup> Hearing of 20 October 2009, T (F) pp. 14757-14758.

<sup>50</sup> Translation of the BCS original entitled: "Submission 387: Motion for Trial Chamber III to Issue a Decision Dismissing All the Charges Brought by the Prosecution Against Vojislav Šešelj", confidential, 22 May 2008.

<sup>51</sup> Hearing of 20 October 2009, T (F) pp. 14756-14757; 14762.

<sup>52</sup> Translation of the BCS original entitled: "Submission 250: Professor Vojislav Šešelj's Motion to Trial Chamber III to Instigate Proceedings for the Contempt of the Tribunal against Carla Del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon", 23 March 2007; Translation of the BCS original entitled: "Submission 382 : Motion of Professor Vojislav Šešelj, for Trial Chamber III to Initiate Proceedings for Contempt of the International Tribunal Against Paolo Pastore-Stocchi", confidential, 31 March 2008; and translation of the BCS original entitled: "Submission 386 : Motion Additional to the Motion of Professor Vojislav Šešelj for Trial Chamber III to Initiate Proceedings Against Paolo Pastore-Stocchi for Contempt of the International Tribunal", confidential, 2 May 2008.

<sup>53</sup> "Order Regarding Mr Šešelj's Motion for Contempt Proceedings", 15 May 2007; "Decision on the Accused's Motion for Review of the Order of 15 May 2007", 19 July 2007; "Decision on Motions by the Prosecution and the Accused to Instigate Contempt Proceedings Against Ms Dahl (from the Office of the Prosecutor) and Mr Vučić (Associate of the Accused)", 10 June 2008; and "Decision on the Accused's Submissions 382 and 386 to Instigate Contempt Proceedings Against Paolo Pastore-

26. With regard to the argument according to which the evidence presented by the Prosecution was insufficient to support the charges against the Accused,<sup>54</sup> the Chamber finds that it would be premature to assess this argument at this stage since the assessment of Prosecution evidence must be made, in accordance with Rule 98 *bis* of the Rules, at the end of the presentation of the Prosecution case. Consequently, the Chamber also dismisses this argument.

27. The Chamber now comes to examine the argument according to which the amount of time the Accused has spent in detention violates the right of the accused, recognised by Article 21 (4) (c) of the Statute, to be tried without undue delay.<sup>55</sup>

28. The Chamber acknowledges the lengthy period of time the Accused has spent in detention and constantly has in mind the fundamental right accorded to him by Article 21 (4) (c) of the Statute. This consideration notably constituted one of the principal foundations of the Chamber's decision of 23 November 2009 which ended the adjournment of the Accused's trial.<sup>56</sup>

29. Nevertheless, the complexity of this trial and the seriousness of the charges against the Accused cannot be overstated. To date, 76 witnesses have been heard and almost 900 exhibits have been admitted in the course of these proceedings. Furthermore, the Accused is charged with particularly serious crimes since they involve the commission, either individually or by way of a joint criminal enterprise, of crimes against humanity and violations of the laws and customs of war. As it has already confirmed, the Chamber considers that it is its highest duty to examine each aspect of the proceedings with all due attention. Furthermore, it finds, in accordance with its Decision of 11 February 2009 that, "its duty to preserve the integrity and fairness of the proceedings must prevail over time considerations in light of the exceptional circumstances of this case".<sup>57</sup> The Chamber insists, moreover, on the fact

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Stocchi", confidential and *ex parte*, 18 November 2008, redacted confidential version filed on 18 November 2008.

<sup>54</sup> Hearing of 20 October 2009, T (F) p. 14761.

<sup>55</sup> Hearing of 20 October 2009, T (F) pp. 14756-14761, 14767, 14770-14771; and Reply, paras 8-24.

<sup>56</sup> "Consolidated Decision on Assignment of Counsel, Adjournment and Prosecution Motion for Additional Time with Separate Opinion of Presiding Judge Antonetti in Annex", confidential and *ex parte*, 23 November 2009, para. 105; redacted confidential version filed on 23 November 2009; redacted public version filed on 24 November 2009

<sup>57</sup> "Decision on Prosecution Motion for Adjournment with Dissenting Opinion of Judge Antonetti in Annex", confidential, 11 February 2009, p. 2 (redacted public version filed on the same day).

that each interruption in this trial was justified by a higher interest aimed at preserving the fairness of the proceedings. As such, it should be noted that the last suspension notably followed the contempt allegations against the Accused which have since been the subject of a sentencing judgement dated 24 July 2009.<sup>58</sup> Finally, it should be pointed out that even when the hearings were suspended, the proceedings continued to go forward in that the Chamber regularly met with the Accused during the administrative hearings and dealt with the requests he submitted.

30. The Chamber ensures compliance with the rights of the defence and in particular those recognised by Article 21 (4) (c) of the Statute. Nevertheless, international and European jurisprudence clearly establish that there is no predetermined threshold with regard to the time period beyond which a trial may be considered unfair on account of undue delay. In the light of the extreme complexity of this case, the large number of witnesses heard and exhibits tendered before the Chamber, the behaviour of all the parties involved, as well as the seriousness of the charges against the Accused, the Chamber is not of the opinion that the Accused's right to be tried without undue delay has been violated.

31. *Ad abundantiam*, the Chamber notes that the Accused indicated during the hearing of 20 October 2009 that he would be willing to link the Request to the resumption of the proceedings<sup>59</sup> and that, furthermore, he specified in his Reply that he requested that the Chamber dismiss all the charges against him *or* ensure that his trial was fair and expeditious.<sup>60</sup> Given that the resumption of the hearings of the remaining witnesses commenced on 12 January 2010, the Request is now moot. Nevertheless, the ambiguous nature of the Request, to which should be added the Reply filed after the Accused was informed of the resumption of the proceedings, may suggest that its objective goes beyond the mere resumption of the proceedings. As such, in light of the importance of the subject of the Request, the Chamber regards it as important to examine each of the arguments put forward by the parties in the greatest detail.

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<sup>58</sup> "Judgement on Allegations of Contempt", redacted public version filed on 24 July 2009. The Accused lodged an appeal against this Judgement on 18 August 2009 (translation of the BCS original entitled: "Notice of Appeal Against the Judgement on Allegations of Contempt of 24 July 2009", filed on 25 August 2009). The appeal is still pending.

<sup>59</sup> Hearing of 20 October 2009, T (F) pp. 14762-14764, 14766-14767.

<sup>60</sup> Reply, para. 26.

**VI. DISPOSITION**

32. For the foregoing reasons,

**PURSUANT TO** Rule 54 of the Rules,

**DISMISSES** the Request.

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

          /signed/            
Jean-Claude Antonetti  
Presiding Judge

Done this tenth day of February 2010  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**