



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: 3 July 2014

Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Mandiaye Niang
Judge Flavia Lattanzi

Registrar: Mr John Hocking

Order of: 3 July 2014

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**SEPARATE OPINION OF PRESIDING JUDGE JEAN-CLAUDE
ANTONETTI TO THE ORDER INVITING THE ACCUSED TO STATE HIS
COMMITMENT TO RESPECT GUARANTEES OF HIS POSSIBLE
PROVISIONAL RELEASE *PROPRIO MOTU***

The Office of the Prosecutor

Mr Serge Brammertz
Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I agree with the request of the Trial Chamber (“Chamber”) to have the Accused Vojislav Šešelj (“Accused”) commit **in writing** to respect the conditions set out in our order transmitted to the authorities of the Republic of Serbia.

As the Republic of Serbia stated that it will provide guarantees on the condition that the Accused complies with them,¹ it was therefore necessary to enquire whether the potential beneficiary consents.

Bearing in mind the consequences that the Chamber’s **initiative** to grant the Accused provisional release *proprio motu* will have on the rest of the proceedings, I wanted to have the following consideration included in the order:

“**CONSIDERING** that, should the Accused fail to state formally his commitment to comply with the conditions, the Chamber will be forced to withdraw the provisional release *proprio motu*”.

As my proposal to have this consideration included in the order was not followed up by my colleagues, I wish to state in this separate opinion that I deem that there is no other way of allowing the provisional release of the Accused as it is absolutely necessary to implement the guarantees requested by the Chamber, which the Republic of Serbia committed itself to ensuring while requesting, justifiably, that the Accused also commit to complying with them.

In order to better understand my position, it is appropriate to recall that a judgement was to have been delivered on **30 October 2013**.² For reasons beyond my control, this goal could not be met and the direct outcome of this is the prolongation of the proceedings and of the provisional detention.

In my opinion, there is no need to keep the Accused in detention as his trial concluded on **20 March 2012** and a judgement will be rendered once the newly assigned judge has fully familiarized himself with the facts of the proceedings.

¹ Correspondence from State re-Mr Šešelj provisional release, submitted by State representatives on 2 July 2014, confidential, 2 July 2014.

² *The Prosecutor v. Vojislav Šešelj*, Case no. IT-03-67-T, “Scheduling Order”, public, 12 April 2013.

Unfortunately, the Rules of Procedure and Evidence ("Rules") do not contain a separate chapter specifically addressing release granted *proprio motu*, but rather Rule 65 contains a general provision on guarantees.

Bearing in mind the requirements of these guarantees, it is not possible to depart from Rule 65 without the risk of abusing our discretionary power. This is the reason why I wanted to include a consideration expressing the **automatic consequences** of a failure to comply with these guarantees, which go against what he stated in his submission of 17 June 2014.³

Considering the stage we have reached, I deemed that it was necessary to inform the Accused formally, by way of this consideration, of the automatic consequences that a **reasonable** and **accountable** judge will have to take into account, bearing in mind, on the one hand, the requirements of Rule 65 of the Rules and, on the other, the official position of the authorities of the Republic of Serbia on the issue of the guarantees.

This situation is a relatively simple one: if the Accused gives his consent in writing that he will respect the conditions that were set out, he will return to Belgrade; should he maintain the position he expressed in his submission, regrettably I will have no other choice but to find that he should remain in detention awaiting a judgement for which no one knows the date of delivery.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this third day of July 2014
At The Hague
The Netherlands

[Seal of the Tribunal]

³ *The Prosecutor v. Vojislav Šešelj*, Case no. IT-03-67-T, "Professor Vojislav Šešelj's Response to the Order of Trial Chamber III of 13 June 2014 Inviting the Parties to Make Submissions on Possible Provisional Release of the Accused *Proprio Motu*", public, 17 June 2014.