

UNITED
NATIONS

IT-03-67-T
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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: 24 February 2012
Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President
Registrar: Mr. John Hocking
Decision of: 24 February 2012

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON 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 both the “Notification/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 6 January 2012 (“First Notification”), and the “Second Notice/Warning To: President of the ICTY Judge Theodor Meron”, filed by the Legal Advisor on 20 January 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) on Notification to the President Submitted by Vojislav Šešelj’s Legal Advisor, 9 January 2012 (public with confidential annexes) (“First Registry Submission”); Registry Submission Pursuant to Rule 33(B) on Second Notification to the President Submitted by Vojislav Šešelj’s Legal Advisor, 27 January 2012 (“Second Registry Submission”).

² See Order on the Registry Submission Pursuant to Rule 33(B), 10 January 2012, p. 1; Order on Second Notice from Dejan Mirović, 23 January 2012, p. 1. According to information received from the Registry of the Tribunal (“Registry”), Šešelj has not responded because the United Nations Detention Unit (“UNDU”) would not photocopy his submission. See E-mail from Jaimee Campbell, Head, Office of Legal Aid and Detention Matters, to Gabrielle McIntyre, *Chef de Cabinet*, dated 15 February 2012.

³ See 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; *In the Matter of Vojislav Šešelj*, Case No. IT-03-67-R77.4, Scheduling Order, 9 November 2011.

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. Preliminary Matters

6. The Registrar argues that the Legal Advisor has no standing to make submissions before the Tribunal on behalf of Šešelj.¹² In particular, 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.¹³ According to the Registrar, in exceptional circumstances, a Chamber may allow a legal advisor to make representations on behalf of a self-represented accused, but such permission has not been granted in

⁶ See 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.

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

¹³ First Registry Submission, para. 3; Second Registry Submission, para. 2.

this case.¹⁴ The Registrar therefore submits that the First Notification and Second Notification (collectively, “Notifications”) should be removed from the case record.¹⁵

7. As the Registrar recognises, the right of audience may be granted to a legal advisor of a self-represented accused and has, in fact, been granted to such advisors in limited circumstances in other proceedings before the Tribunal:¹⁶ 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.¹⁷ I note that no such right of audience has been granted to the Legal Advisor in this case, nor does it appear that Šešelj has requested that such right be granted. I further observe that Šešelj has not made submissions in relation to the Notifications. I note, however, that the Legal Advisor alleges that the UNDU staff has prevented Šešelj from writing to me concerning alleged violations of his human rights.¹⁸ In light of the gravity of these allegations, and the fact that they involve purported impediments to Šešelj’s ability to make legal submissions, I consider that it is in the interests of justice to grant the Legal Advisor a limited and exceptional right of audience solely in relation to the Notifications.

B. Submissions and Analysis

8. The Legal Advisor contends that on 3 January 2012, staff of the UNDU “brutally” prevented Šešelj from writing to me to protest alleged violations of his human rights.¹⁹ In particular, he alleges that staff of the UNDU refused to allow Šešelj’s “protest letter” to be photocopied “and thereby prevented the letter from being sent to me.”²⁰ In so doing, the Legal Advisor alleges, staff members of the UNDU have violated several rules and policies of the Tribunal, including the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal,²¹ as well as Article 21 of the Statute of the Tribunal

¹⁴ First Registry Submission, para. 3.

¹⁵ First Registry Submission, para. 3; Second Registry Submission, para. 2.

¹⁶ See *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) (“*Tolimir* Decision”), p. 10; *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-PT, Order on the Procedure for the Conduct of Trial, 8 October 2009, para. 6, p. 8. See also *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Decision on Appeal Against Registrar’s 10 February 2010 Decision, 25 March 2010, para. 6.

¹⁷ See, e.g., *Tolimir* Decision, paras 23-24.

¹⁸ See First Notification, p. 1.

¹⁹ First Notification, p. 1. See also First Notification, p. 4. The Legal Advisor also alleges that staff of the UNDU are “simply bullying and mistreating” Šešelj and refers to the “scandalous treatment” of Šešelj, the “inappropriate and scandalous behaviour of ICTY staff”, and the “unprecedented and horrid mistreatment” of Šešelj. First Notification, pp. 1-4.

²⁰ First Notification, p. 1.

²¹ IT/38/Rev.9, 21 July 2005.

("Statute").²² The Legal Advisor further argues that certain statements that I made to the United Nations Security Council in December 2011 are at odds with the events of 3 January 2012.²³

9. The Legal Advisor also submits that on 19 and 20 January 2012, Šešelj was again prevented from photocopying a submission.²⁴ The Legal Advisor asserts that "the events of 19 and 20 January are a clear provocation, mistreatment and inhumane conduct" aimed at aggravating Šešelj's health, refers to the events as "grave torture and inhumane provocation",²⁵ and requests that I allow "Šešelj to correspond normally with the [Tribunal] and to stop individuals and groups within [the Tribunal] from torturing him."²⁶ The Legal Advisor also notes that for the past nine years, Šešelj has been able to photocopy letters that he wrote to the Tribunal, so that he could retain proof that he had submitted the letters.²⁷

10. In response to the Notifications, the Registrar categorically rejects the suggestion that Šešelj was prevented from submitting a complaint to me.²⁸ The Registrar avers that Šešelj has the ability to address the Tribunal in writing, as demonstrated by the more than 480 written submissions that he has filed to date, including complaints to the President.²⁹ The Registrar also asserts that a complaint need not be photocopied prior to its filing; rather, in accordance with the well established procedure that Šešelj has followed for his prior filings, it is sufficient to submit a complaint for filing, after which a copy will be provided to Šešelj for his records as a matter of course.³⁰ In any event, the Registrar observes that if Šešelj wishes to photocopy a complaint prior to its filing, he may do so himself using the fully equipped office that is at his disposal at the UNDU.³¹ According to the Registrar, these facilities were fully available to Šešelj at the relevant times, but in each instance, Šešelj asked a UNDU guard to photocopy a document for him, which the guard declined to do.³² In the Registrar's view, it would be inappropriate for guards to interrupt their regular security duties to perform clerical tasks for a detainee, and doing so would, by definition, amount to

²² First Notification, pp. 1-4.

²³ First Notification, p. 4. *See also* First Notification, p. 5, noting that the Legal Advisor intends to inform representatives of a permanent member of the United Nations Security Council of the events of 3 January 2012.

²⁴ Second Notification, p. 1.

²⁵ Second Notification, p. 1.

²⁶ Second Notification, p. 2.

²⁷ Second Notification, p. 1.

²⁸ First Registry Submission, para. 4; Second Registry Submission, para. 3.

²⁹ Second Registry Submission, para. 4. *See also* First Registry Submission, para. 4.

³⁰ Second Registry Submission, para. 4.

³¹ First Registry Submission, para. 5; Second Registry Submission, para. 5. The Registrar notes that this office includes access to a photocopying machine, printer, and scanner, and that Šešelj has been advised how to make use of these facilities. First Registry Submission, para. 5; Second Registry Submission, para. 5.

³² First Registry Submission, para. 5; Second Registry Submission, paras 5-6.

a breach of security protocols at the UNDU and could jeopardise the safety and security of detainees.³³ The Registrar contends that the claims in the Notifications are therefore without merit.³⁴

11. As an initial matter, I observe that office facilities appear to be available to Šešelj, and that there is no allegation that he was prevented from filing documents with the Registry. In these circumstances, I consider that the Legal Advisor has not demonstrated that Šešelj was prevented from making a complaint to me or otherwise prevented from filing submissions on his own behalf. Given that the Legal Advisor has not demonstrated that Šešelj was, in fact, prevented from submitting a complaint, there is no need to consider whether any such alleged act violated the Statute or any of the rules or policies cited by the Legal Advisor. Therefore, I find that the Legal Advisor fails to demonstrate that UNDU staff members' refusal to photocopy letters for Šešelj was unreasonable.

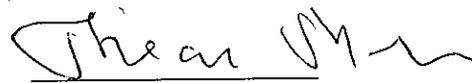
12. With respect to the Legal Advisor's allegations that Šešelj has been mistreated or subjected to inappropriate behaviour by UNDU staff, I note that insofar as these allegations refer to UNDU staff members refusing to photocopy Šešelj's complaint, they are without merit for the reasons already given. To the extent that the Legal Advisor is referring to any other actions by UNDU staff, he fails to provide details as to the manner or nature of this alleged mistreatment or otherwise substantiate his claims. These allegations will therefore not be considered further.

IV. DISPOSITION

13. For the foregoing reasons, the First Notification and the Second Notification are **DENIED**.

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

Done this 24th day of February 2012,
At The Hague,
The Netherlands.


Judge Theodor Meron
President

[Seal of the Tribunal]

³³ Second Registry Submission, para. 6. The Registrar submits that “[o]nly in exceptional circumstances, upon a written request, may UNDU staff assist an accused with clerical tasks, such as photocopying”, and asserts that even upon prompting, Šešelj has not made such a request. First Registry Submission, para. 5.

³⁴ First Registry Submission, para. 6; Second Registry Submission, para. 7.