



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: 28 April 2015
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: 28 April 2015

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON REQUEST OF THE ACCUSED TO INITIATE
DISCIPLINARY PROCEEDINGS AGAINST PROSECUTOR SERGE
BRAMMERTZ, TO DISQUALIFY HIM FROM THE CASE AND FOR THE
SECURITY COUNCIL TO RELIEVE HIM OF HIS DUTIES**

The Office of the Prosecutor

Mr Serge Brammertz
Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

TRIAL CHAMBER III (“Chamber”) is seized of a submission dated 17 April 2015 (“Submission”) from Vojislav Šešelj (“Accused”) requesting the Chamber to initiate disciplinary proceedings against Prosecutor Serge Brammertz (“Prosecutor”).

Arguments of the Parties

1. The Accused maintains that the Prosecutor did not act independently of Croatian and European political structures in violation of Article 16, paragraph 2 of the Statute of the Tribunal;¹ that he is biased against him² and that he has abused his power because of this bias.³ The Accused therefore asks the Chamber to initiate disciplinary proceedings against the Prosecutor, to disqualify him from the present case pursuant to Rule 5 of the Rules of Procedure and Evidence.⁴

2. The Prosecution concludes that the requests of the Accused should be dismissed as baseless allegations. It calls on the Chamber not to tolerate these unsupported allegations.⁵

Reasons for Decision

3. The allegations raised by the Accused resemble those he already presented on several occasions before the Chamber and the Appeals Chamber.⁶ In its decision of 13 January 2015, while considering such allegations, the Chamber already refused to examine them, for the reason that “[t]he contested conduct does not directly concern a violation of the integrity of the proceedings, but rather alleges dishonourable behaviour by the Prosecutor with regard to the mandate entrusted to him by the United Nations Security Council.”⁷

4. While reiterating the same position, namely that it does not rule on the integrity of the Prosecutor’s mandate, as long as the alleged violation of the mandate

¹ Submission, paras 16 to 19.

² Submission, paras 20, 25 and 26.

³ Submission, paras 1 to 12.

⁴ Submission, para. 26 and “Legal Remedy Sought”.

⁵ “Prosecution Response to the Accused’s Objection of 17 April 2015”, 22 April 2015, public.

⁶ See “Response to the Prosecutor’s Motion to Revoke Provisional Release”, public, 23 December 2014; *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR65.1, “Professor Vojislav Šešelj’s Reply to the Prosecutor’s Appeal to Revoke the Provisional Release of the Accused”, 5 February 2015, public, p. 4.

⁷ “Decision on Prosecution Motion to Revoke Provisional Release”, 13 January 2015, public, para. 15.

does not translate into a violation of the procedural rules in the case in question, the Chamber invites the Accused to refrain from resubmitting objections that have already been examined and rejected. This type of conduct stems from an abuse of process that the Chamber will not tolerate.

FOR THE FOREGOING REASONS the Chamber,

DECLARES THAT IT LACKS JURISDICTION to entertain the Submission,

NOTES that the repeated requests of the Accused stem from an abuse of process and invites him to refrain from doing so in the future.

Judge Jean Claude Antonetti attaches a separate concurring opinion.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-eighth day of April 2015
At The Hague
The Netherlands

[Seal of the Tribunal]

**Separate Concurring Opinion
of Presiding Judge Jean-Claude Antonetti**

The Trial Chamber (“Chamber”) declared unanimously that it lacks jurisdiction to entertain the submission of the Accused Vojislav Šešelj (“Accused”). I have already had occasion to express myself on the matter of initiating disciplinary proceedings against the ICTY Prosecutor. I can only repeat this position, which is that the judges lack jurisdiction to initiate any disciplinary proceedings against the head of an international Prosecutor’s Office.

In paragraph 30 of his submission, the Accused maintains that the legal basis comes under Rule 5 of the Rules of Procedure and Evidence (“Rules”). This Rule is entitled, “Non-compliance with Rules”. In this instance, I do not see which Rule has been violated by the Prosecutor. Rule 37 of the Rules stipulates that the Prosecutor performs all the functions provided by the Statute. Article 16 (A) of the Statute effectively provides that he is responsible for investigation and prosecution. In addition to this mandatory procedural aspect, it is my belief that a Prosecutor should benefit, **like the judges, from absolute immunity**. Without this immunity, the Prosecutor or the judges cannot perform their duties because they could be implicated at any time in a particular act. In this case, through his procedural act, the Prosecutor was only carrying out his task, even if an external observer could suspect some worrying connections between a sequence of events, which is what the Accused claims in paragraph 17 of his submission.

The very title of his submission, “Objection of Professor Vojislav Šešelj Concerning Abuse of Procedural Powers by Chief Prosecutor Serge Brammertz” is somewhat confusing. The Rules do not provide for any objections like those of the Accused regarding the Prosecutor. These submissions seem to me more suited to the present procedural phase mentioned by the Accused in paragraph 11 of his submission, because the Appeals Chamber is currently seized of a request from the Prosecution contesting the decision of the Trial Chamber of 10 April 2015. In this respect, we can conclude that, after the Prosecution’s request to revoke the provisional release of the Accused, the Accused made identical observations. The similarity of the forms

requires that his objections be addressed to the Appeals Chamber and not to the present Chamber.

The Chamber deemed it necessary to mention in its decision its wish for the Accused to refrain in future from repeating the same request at the risk of an abuse of process. As I have already mentioned in my previous opinion, the Chamber requires calm for deliberations in order to dedicate itself fully to the evidence regarding the Indictment against the Accused. To deal with submissions from the Accused or the Prosecutor can only be an interruption of the speed required of us by Statute to deliver the judgement expeditiously. I should not be monopolised as a result of a decision on the provisional release of the Accused that was given careful consideration in view of serious medical reasons.

For my part, the most important matter is to know whether the Accused is guilty or innocent but, for the time being, he is presumed innocent and with respect to the Accused, and to the prosecution, my **professional conduct must be beyond reproach**. The subject raised by the Accused is an important one because it poses the question of links between political powers and a Prosecutor, including a Prosecutor of an international court. If an Accused puts forward a theoretical possibility of a link, I would normally have to reply but would also need to have jurisdiction for this and, unfortunately, I do not. This is the general idea of the first decision and also of this decision.

 /signed/
Jean-Claude Antonetti
Presiding Judge