



Mechanism for International Criminal Tribunals

Case No. MICT-16-99-A

Date: 11 October 2017

Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Lee G. Muthoga
Judge Florence Rita Arrey
Judge Ben Emmerson
Judge Ivo Nelson de Caires Batista Rosa

Registrar: Mr. Olufemi Elias

Decision of: 11 October 2017

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON ASSIGNMENT OF STANDBY COUNSEL
FOR THE APPEAL HEARING**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen
Ms. Barbara Goy

The Respondent:

Mr. Vojislav Šešelj, *pro se*

THE APPEALS CHAMBER of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively);¹

NOTING the Prosecution’s appeal² against the judgement rendered in this case on 31 March 2016 by Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia;³

NOTING that the briefing in this case is complete;⁴

NOTING that Vojislav Šešelj has elected to represent himself and that he has the right to self-representation at the appeal stage;⁵

NOTING that, in accordance with Rule 141 of the Rules of Procedure and Evidence (“Rules”), “[a]fter the expiry of the time-limits for filing the briefs [...], the Appeals Chamber shall set the date for the hearing and the Registrar shall notify the Parties”;

NOTING that the Appeals Chamber will issue an order scheduling the appeal hearing in due course;

NOTING that, in his Response Brief, Šešelj has indicated his intention not to attend the upcoming appeal hearing;⁶

RECALLING that, in its order of 18 September 2017, the Appeals Chamber specifically warned Šešelj that, should he maintain his intention not to attend the appeal hearing, it will be in the interests of justice to instruct the Registrar to assign a standby counsel to represent Šešelj’s interests at the hearing;⁷

¹ Order Assigning Judges to a Case Before the Appeals Chamber, 10 May 2016.

² Prosecution’s Notice of Appeal, 2 May 2016; Prosecution Appeal Brief, 18 July 2016 (confidential with confidential annex; public redacted version filed on 29 August 2016); Corrigendum to Prosecution Appeal Brief, 29 August 2016 (confidential with confidential annex).

³ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Judgement, 14 June 2016 (original French version filed on 31 March 2016). *See also* *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Individual Statement of Judge Mandiaye Niang, 14 June 2016 (original French version filed on 31 March 2016); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Concurring Opinion of Presiding Judge Jean-Claude Antonetti Attached to the Judgement, 16 September 2016 (original French version filed on 31 March 2016); *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Partially Dissenting Opinion of Judge Flavia Lattanzi – Amended Version, 1 July 2016 (original French version filed on 12 April 2016).

⁴ *See* Profes[s]or Vojislav [Š]ešelj’s Respondent’s Brief, 7 February 2017 (original B/C/S version received on 19 December 2016) (“Response Brief”); Prosecution Reply Brief, 22 February 2017.

⁵ *See* *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Momčilo Krajišnik’s Request to Self-Represent, on Counsel’s Motions in Relation to Appointment of *Amicus Curiae*, and on the Prosecution Motion of 16 February 2007, 11 May 2007, paras. 10-12.

⁶ Response Brief, paras. 410-412.

⁷ Order in Relation to the Appeal Hearing, 18 September 2017 (“Order”), p. 3. *See also* Order, p. 2. The Appeals Chamber further stated that, if Šešelj were unable to travel to The Hague for the hearing, he could request, pursuant to Rule 96 of the Rules, to participate therein by way of video-conference link. *See* Order, p. 3.

RECALLING further that the Appeals Chamber considered that Šešelj should be given an opportunity to reconsider his position not to attend the appeal hearing prior to instructing the Registrar to assign standby counsel and, therefore, invited Šešelj to clarify his position within 10 days of receiving the B/C/S version of the Order;⁸

NOTING that, on 19 September 2017, Šešelj confirmed receipt of the B/C/S version of the Order;⁹

NOTING that the time limit for Šešelj to clarify his position on attending the appeal hearing expired on 29 September 2017 and that he did not make any submissions in this regard;

CONSIDERING that Šešelj's refusal to respond to the Order indicates that he maintains his previously stated position not to participate in any way in the appeal hearing;

CONSIDERING that Šešelj's position not to participate in the appeal hearing rises to the level of a disruption of the proceedings that would warrant the restriction of his right to self-representation;¹⁰

CONSIDERING that, pursuant to Rules 46 and 131 of the Rules, the assignment of standby counsel is warranted in the interests of justice to ensure the protection of Šešelj's rights at the appeal hearing;

CONSIDERING further that any restriction on Šešelj's right to self-representation must be limited to the minimum extent necessary to protect the Mechanism's interests in a reasonably expeditious resolution of the appeal before it;¹¹

CONSIDERING, therefore, that the mandate of standby counsel shall be strictly limited to ensuring that Šešelj's procedural rights at the hearing are protected in the event that Šešelj does not appear for the appeal hearing, and shall not extend to responding to the substance of the Prosecution's appeal on Šešelj's behalf;¹²

CONSIDERING that standby counsel shall have access to the *inter partes* record of the appeal proceedings in order to prepare for the hearing;

PURSUANT TO Rules 46 and 131 of the Rules,

⁸ Order, p. 3.

⁹ Procès-Verbal of Reception of Document(s) of the Mechanism for International Criminal Tribunals, 19 September 2017.

¹⁰ See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-AR73.3, Decision on Appeal Against the Trial Chamber's Decision on Assignment of Counsel, 20 October 2006, paras. 20, 21; *Slobodan Milošević v. Prosecutor*, Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004 ("*Milošević* Decision of 1 November 2004"), para. 13.

¹¹ See Order, p. 2; *Milošević* Decision of 1 November 2004, paras. 17, 19.

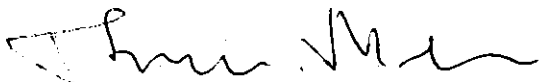
¹² See Order, p. 2.

INSTRUCTS the Registrar to assign a standby counsel within ten days of the issuance of this decision; and

DECIDES that the mandate of standby counsel shall be strictly limited to ensuring that Šešelj's procedural rights at the upcoming appeal hearing are protected in the event that Šešelj does not appear for the hearing.

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

Done this 11th day of October 2017,
At The Hague,
The Netherlands



Judge Theodor Meron, Presiding

[Seal of the Mechanism]