Case of professor Šešelj: what must the Hague Tribunal do?

By Alexander Mezyaev

As it became known from the report by the doctors who visited professor Vojislav Šešelj on January 27-28, his state of health is critical. Staying in prison, without special medical aid he may die at any moment.

Now it is clear why it took more than six months to fulfill the court's order to carry out an "independent" medical examination of V. Šešelj. Apparently it was not easy to find the doctors, who were ready to grant any services. But eventually they found them. Last year the doctors appointed by the International Criminal Tribunal for the former Yugoslavia (ICTY) said there were no grounds to worry about Šešelj's health. There is no other explanation why it took more than six month to fulfill the court's demand. In fact the court provided an explanation but it would have been better if the court hadn't done it. The secretariat of ICTY claimed that appointing doctors was such a complicated procedure that it was impossible to make it earlier. That's a bare-faced lie, considering that several Russian doctors were ready to examine Šešelj at any moment and Šešelj also asked to appoint this group of doctors but "for some reason" that did not happen. Eventually the court appointed Russian doctor S.N. Avdeyev, who was pulmonologist while Šešelj needed a cardiologist!

Now when the medical conclusion has been announced, what must the Hague Tribunal do? First of all it must to release Šešelj immediately. The trial can continue but with the defendant being out of prison.

The arrest of V. Šešelj in February 2003, right after his free-will arrival in The Hague was made with the violations of the international law. Under the International law, any defendant has the right for freedom before the court brings a guilty verdict against him. The Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms constitute that making arrest before or during the trial is possible but rather as an exception from the rule but not as a rule! In the Hague Tribunal it is usually the release which is an exception from the rule. The difference is huge. The international law obliges the prosecution to prove the necessity of defendant's arrest, while in ICTY it is the defendant who should prove that he can be released! **The fundamental legal defect of the Hague Tribunal is its refusal to recognize presumption of innocence (a defendant has to carry the burden of providing exculpatory evidence).** Meanwhile the Hague tribunal keeps on making intrusive declarations on its highest standards of the International Criminal Justice!

Even under ICTY's norms, the defendant has the right for pre-trial release. Although this right was determined by the Tribunal, it has a number of conditions, none of which has legal grounds - they are all spontaneous. But even these spontaneously defined conditions in the case of V. Šešelj cannot hamper his pre-trial release. In this respect it is necessary to pay attention to two precedents.

The first precedent is the case of Ramush Haradinaj, who was given a provisional release from custody even despite the fact that **several dozens of witnesses in his case had been killed**. In that case we could assume that the judges were scared and unanimously released the Albanian and later justified him. But in Šešelj's case there is no indication to intimidation of witnesses. Yes the tribunal brought several accusations against Šešelj with regard to disclosure of witnesses' names. But, firstly, in reality no names were disclosed, secondly, none of the witnesses who testified against Šešelj was hurt - even among those whose names allegedly became known (the witnesses declared it themselves). The whole story with secret witnesses in ICTY is a fake.

There are other reasons not to disclose witnesses' names. It is necessary to make an impression that the defendants are so dangerous and if their names become known they will be killed. But

defendants will learn the names of the witnesses anyway which means there is another reason not to reveal them. Firstly, the names may become known to wide audience, including those who definitively know that this particular witness was not there at all. Secondly, the procedure of disclosing the names of witnesses for defense differs from the procedure with usual witnesses (seven days instead of one month). Why is it so? After all the names will be disclosed to the defense anyway! It is done in order not to give the lawyers enough time to find out important facts from the witness' biography (for example, a witness studied at school for mentally handicapped children or has a long criminal record etc.). (1) Indeed, the disclosure of the names alone is not so important as opportunity to find out what is behind the names!

The second precedent is the recent release of Jadranko Prlic, one of the defendants in the case "Prosecutor against Prilic and others". Prlic was allowed to go home for the period of the verdict's preparation. This is the first case when ICTY allows a provisional release after the trial (usually it is a pre-trial release). The case of Šešelj is on the final stage. This is obviously a scandalous final because the judges did not allow Šešelj's defense to cover travel costs for his supporters who were to come to the Hague (the court's chairman made the situation absurd when he offered the supporters of the Serbian radical Party to "chip in" together to collect the required sum). In early March last hearings will be held and the prosecution and V. Šešelj will make their final speeches. All witnesses for the prosecution have already spoken in the court. There are no grounds to keep Šešelj in jail. That is why Prlic's precedent should be applied to Šešelj. The judges simply must do this. Also because the chairman of the court chamber in the case Prlic and Šešelj is the same - Jean Claude Antonetti!

Vojislav Šešelj must be immediately released and be given opportunity to continue to fight the Hague Tribunal being out of prison.

1) These are real facts, which the defense managed to prove, even despite the fact that the tribunal "hushed up" the witnesses in order not to give the lawyers time for the investigation regarding these witnesses (from the case of Slobodan Milosevic).

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