



## Prosecutor v. Šešelj (Urgent Order to the Dutch Authorities regarding Health and Welfare of the Accused)

Case number IT-03-67-T

**Country:**

**Region:**

**Year:** 2006

**Court:** International Criminal Tribunal for the former Yugoslavia International Criminal Tribunal for the former Yugoslavia

**Health Topics:** Diet and nutrition, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to health, Right to life

### Facts

The case concerned the welfare of an Accused who undertook a hunger strike while one of his appeals was pending. The Accused was self-represented and displayed significant disdain for the proceedings of the Tribunal.

On July 4, 2006, the Tribunal made a decision as to the production and availability of documents to the Accused, stipulating that only certain documents had to be in a language he understood. The Accused appealed the decision to the trial chamber, but the appeal was ignored, as there was no reasoned request. The Accused appealed again, which was denied, as the trial chamber had not certified the issue for appeal. Given the gravity of the issue, the trial chamber decided to grant certification of the issue on November 22, 2006. The Accused was not present at the certification conference but was provided with a recording of the conference and did not pursue the appeal.

On November 26, 2006, the Tribunal revoked the Accused's self-representation and assigned counsel due to his substantial obstruction of the proceedings of the court with no sign of improvement. A request to appeal this decision was filed by independent counsel and granted.

The Accused began a hunger strike on November 10, 2006 which was continuing at the time of this decision. The strike was expressly conditioned on the Accused's positions being granted in the two appeals, namely 1) that he receive copies of all trial documents in hard copy and Serbian and 2) that his assigned counsel be removed and his self-representation reinstated. The Accused had refused any medical intervention should he become unconscious in pursuit of his hunger strike.

### Decision and Reasoning

The Tribunal first noted that the health of the Accused was squarely in its purview and that a conflict between the Accused's right to physical integrity and the Tribunal's obligation to protect his health and welfare could arise. The Tribunal stated that the trial would not be undermined by the Accused's extra-legal activities and suspended the trial but ordered the Netherlands, the host state, to take decisive measures to protect the Accused's health and welfare so as to return to trial as soon as possible.

The Tribunal then noted that the European Court of Human Rights did not consider force-feeding to be torture as long as there was medical necessity, the procedural guarantees were complied with and the detainee was not fed in an inhuman or degrading manner. The Tribunal also considered the system in place in the Netherlands for dealing with hunger strikes and ordered that the Netherlands authorities implement their proceedings to protect the health of the Accused immediately (including, if necessary, by drip-feeding). It further ordered that the medical experts giving the care would seek advice on the domestic and international medical ethics when planning the intervention and the Netherlands ensure that the program in place conformed with all current international medical and ethical standards.

### Decision Excerpts

"The Trial Chamber is concerned that a situation might arise where the Accused's right to physical integrity

and the obligation of the Tribunal to protect the Accused's health and welfare are in conflict. Ultimately, the Accused may create a situation in which it may not be possible to preserve his life without medical intervention." Paragraph 9.

"Turning to the exercise of the Tribunal's judicial function to determine the criminal responsibility of those indicted before it, be it through an acquittal or a conviction, the Trial Chamber cannot accept the conditions of trial being determined by non-legal processes dictated by an accused. " Paragraph 10

"[A]ccording to jurisprudence of the European Court of Human Rights, 'force-feeding' does not constitute torture, inhuman, or degrading treatment if there is a medical necessity to do so, if procedural guarantees for the to force feed are complied with and the if the manner in which the detainee is force-fed is not inhumane or degrading." Paragraph 12

"The Trial Chamber requires that all authorized measures be taken to medically intervene in the interests of protecting the health and welfare of the Accused and to avoid loss of life, even if this would include drip-feeding." Paragraph 13

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