

## Vojislav Seselj and the End of the ICTY

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<http://www.pravda.rs/2015/04/05/srbija-ima-pravo-da-ne-isporuci-seselja-na-osnovu-rezolucije-ujedinjenih-nacija-37194/?lng=lat>

### **Serbia has the right not to deliver Seselj on the basis of United Nations resolutions 37/194**

By Dr. **Dragan Pavlovic**

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#### SUMMARY

The UN Resolution 37/194, 1984 implies that a prisoner that needs medical treatment must be treated in a standard hospital condition. Therefore this further implies that the Serbian politician Dr. Vojislav Seselj, who has been released from ICTY prison for medical treatment, cannot be returned to prison and must follow his cancer treatment in hospital.



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Recently, the news has arrived from the Hague ICTY that Mr. Vojislav Seselj must be returned to The Hague ICTY prison institution. However, according to the United Nations resolution 37/194, on "Medical Ethics", adopted by the General Assembly in 1982, Mr. Vojislav Seselj cannot be returned to prison, but the treatment must continue in an appropriate medical institution that provides the particular patient the "same treatment" as other patients suffering from such or similar disease. In principle, the maximal/optimal medical care is not available in the Hague prison or cannot be and has never been provided to the inmates in the past.

"Annex" UN Resolution 37/194 of 1982.

(United Nations, The General Assembly, Principles of Medical Ethics, **A/RES/37/194**: Resolution 37/194, 11th plenary meeting, 18 December 1982)

Principle 1, specifies: " Health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease **of the same quality and standard as is afforded to those who are not imprisoned or detained.** " (...)

Principle 6. There may be **no derogation** from the foregoing principles on any ground whatsoever, including public emergency. (Emphasis ours)

The aforementioned institutions ("Court" in The Hague), which ordered the return of Mr. Seselj, in principle could assure adequate treatment in the local university hospital, and such an arrangement has never been provided to the inmates and will almost certainly not be offered to Mr. Seselj. There is a risk, as the experience with some prisoners has shown, some of whom died under unclear circumstances, that the treatment in the Hague will be inadequate and therefore will be not in accordance with the prescription of the International Law, i.e. not in accordance with the UN Resolution 37/194. The only available solution would be to treat Mr. Seselj in Serbia. Therefore, Mr. Seselj should stay in Serbia and start therapy without delay.

In the meantime, Mr. Seselj should file an appeal to the OHCHR. This attempt to bring Mr. Seselj back to the Hague prison is a violation of human rights by the ICTY, and should probably contribute decisively to the end of illegal practice of this institution.

The cited resolution has been violated number of times in the past. Very frequently the experts do not pay sufficient attention to its prescriptions. For example, Ivan Jankovic in his book "The prohibition of abuse - manual for police and prison staff," the Belgrade Centre for Human Rights, 2010 - although superficially discussed this aspect of the health care of prisoners, does not mention some important aspects that are treated in the resolution 37/194, such as a Principle 1 and Principle 6 of the cited Annex.

The resolution can be found here:

<http://www.un.org/documents/ga/res/37/a37r194.htm>

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## **ICTY grubo krši ljudska prava**

### **Gospodin Šešelj se ne može vraćati u Hag - ICTY treba ukinuti**

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Nedavno, iz Haga je stigla vest da gospodin Vojislav Šešelj mora da se vrati u haški zatvor institucije koja sebe naziva ICTY. Prema rezoluciji Ujedinjenih nacija 37/194, o "Medicinskoj etici", usvojenoj na Generalnoj skupštini 1982. godine, gospodin Vojislav Šešelj se ne može vratiti u zatvor već se lečenje mora nastaviti u odgovarajućoj medicinskoj ustanovi koja mu obezbeđuje "istu terapiju" kao ostalim pacijentima koji boluju od takve ili slične bolesti. U načelu, maksimalna/optimalna medicinska nega NIJE MOGUĆA u haškom zatvoru.

"Anex" rezolucije UN 37/194 iz 1982, Princip 1, precizira: "Zdravstveno osoblje posebno lekari koji su zaduženi za negu zatvorenika i pritvorenih, dužni su da obezbede zaštitu njihovog fizičkog i mentalnog zdravlja i pruže terapiju bolesti **istog kvaliteta i standard** kaji se obezbedjuje osobama koje nisu zatvorenici ili pritvoreni."

Principle 6 insistira da se nabrojani principi moraju postovati u potpunosti i u svim okolnostima. (United Nations, The General Assembly, Principles of Medical Ethics, **A/RES/37/194**: Resolution 37/194, 11th plenary meeting, 18 December 1982). Rezolucija se može naći ovde:

<http://www.un.org/documents/ga/res/37/a37r194.htm>

**Office of the High Commissioner for Human Rights (OHCHR)**

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>

ANNEX

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 6

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

Pomenuta institucija («sud» u Hagu) koja zahteva povratak gospodina Šešelja verovatno u načelu može, al tehnički je dosta teško, da obezbedi odgovarajuće lečenje u Hagu. Svakako, ne samo da je praktičnije da se Šešelj leči u Srbiji. Rizik postoji, što i iskustvo s ranijim zatvorenici pokazuje, od kojih je više preminulo u Hagu pod sumnjivim okolnostima, da to lečenje u Hagu neće biti adekvatno. U načelu se ovakva predviđena terapija ne može i ne sme sprovesti van specijalizovane medicinske ustanove. S toga bi gospodin Šešelj morao da oстане u Srbiji i da bez odlaganja počne sa terapijom.

U međuvremenu, verovatno treba uložiti žalbu **OHCHR**: Office of the United Nations High Commissioner for Human Rights (OHCHR) Palais Wilson, 52 rue des Pâquis, CH-1201 Geneva, Switzerland.

<http://www.un.org/documents/ga/res/37/a37r194.htm>

Ovaj pokušaj vraćanja gospodina Šešelja u haški zatvor je kršenja ljudskih prava od strane ICTY i treba da označi kraj ovog ilegalnog suda.

Naša medija, na primer „Politika“, izgleda NIKAD nisu komentarisala tu rezoluciju UN. Ako jesu, radovalo bi me. Ali to treba ipak sad PONOVO uraditi - iz očiglednih razloga.

Zanimljivo je da **Ivan Janković**, u svojoj knjizi «Zabrana zlostavljanja, priručnik za policiju i zatvorsko osoblje», Beogradski centar za ljudska prava, 2010, mada površno diskutuje taj aspekt zdravstvene zaštite zatvorenika, ne spominje neke važne aspekte(!) koji su potencirani u rezoluciji 37/194, kao

recimo Principle 1 i Principle 6 iz anexa. Prvi Princip sam ja citirao gore.

**Principle 6 potencira da se navedeni principi NIKAKO ne mogu zanemarivati čak ni u nekim hitnim situacijama. To je sad neobično vazno.**