



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-R77.3

Date: 2 December 2010

Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Presiding
Judge Kevin Parker
Judge Burton Hall

Registrar: Mr. John Hocking

Decision: 2 December 2010

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON PROSECUTOR'S MOTION TO AMEND THE
ORDER IN LIEU OF INDICTMENT**

The Amicus Curiae Prosecutor:

Mr. Bruce MacFarlane, Q.C.

The Accused:

Mr. Vojislav Šešelj

THIS TRIAL CHAMBER of the 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 (“Tribunal”);

BEING SEISED OF the “Prosecutor’s Motion to Amend the Order in Lieu of Indictment” filed by the *Amicus Curiae* Prosecutor (“*Amicus Curiae*”) on 23 April 2010 (“Motion”);

NOTING the Order in Lieu of an Indictment issued on 3 February 2010 (“Indictment”) which charges Vojislav Šešelj (“Accused”) with having “committed Contempt of the Tribunal punishable under this Tribunal’s inherent power and Rule 77(A)(ii) of the Rules, for having disclosed information which may identify the 11 protected witnesses in violation of orders of a Chamber in a book [REDACTED]”;¹

NOTING that the Motion seeks to clarify the scope of the Indictment by spelling out that the book which is alleged to have revealed the identity of 11 protected witnesses is available in both hardcopy and electronic format;²

NOTING that the the *Amicus Curiae* submits that the proposed amendment will facilitate the determination of the issues in the case and would not result in an unfair prejudice to the accused;³

NOTING that the Accused received a copy of the Motion in his own language on 23 April 2010 and that did not respond within the time limit prescribed by Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);⁴

CONSIDERING that an indictment may be amended even after a case has been assigned to a Trial Chamber by leave from the Trial Chamber and provided the proposed amendment is supported by *prima facie* material;⁵

CONSIDERING that the Chamber may use its discretion to grant the proposed amendment when it facilitates the determination of the real issues in the case⁶ and provided the amendment does not result in an unfair prejudice to the accused when viewed in light of the circumstances of the case as a whole;⁷

¹ Public Redacted Version of Second Decision on Prosecution’s Motion under Rule 77 Concerning Further Breaches of Protective Measures (Three Books) issued on 3 February 2010, 4 February 2010, Annex.

² Motion, para. 1.

³ Motion, para. 16.

⁴ Procès-verbal of reception signed by the Accused on 23 April 2010.

⁵ Rule 50 (A) of the Rules; Article 19 (1) of the Statute of the Tribunal (“Statute”).

⁶ *Prosecutor v. Popović et al.*, Case No. IT-05-88-PT, Decision on Further Amendments and Challenges to the Indictment, 13 July 2006 (“*Popović* Decision”), paras. 5-11, 20-36.

⁷ *Prosecutor v. Naletilić and Martinović*, Case. IT-08-34-PT, Decision on Vinko Martinović’s Objection to the Amended Indictment and Mladen Naletilić’s Preliminary Motion to the Amended Indictment, 14 February 2001, pp. 4-7.

CONSIDERING that when assessing whether the amendment will cause the accused an unfair prejudice, the Chamber considers whether the amendment deprives the accused of an adequate opportunity to prepare an effective defence and whether the amendment will adversely affect the accused's right to be tried without delay;⁸

CONSIDERING first that the *Amicus Curiae* provides sufficient material in support of the proposed amendment;⁹

CONSIDERING however that the material issue in this case is whether or not the identity of 11 protected witnesses was revealed in a book for which the Accused may be held responsible;

CONSIDERING therefore that, for the purposes of the Indictment, the support of the book, namely whether it was available in hardcopy or in electronic format, or both, is immaterial to the central issue as to whether or not the witnesses's identity were revealed in the said book;


CONSIDERING further that, during the course of trial, the *Amicus Curiae* will have an opportunity to present submissions regarding the dissemination of the book in relation to the seriousness of the alleged offence;

CONSIDERING therefore that the Chamber does not consider it necessary to exercise its discretion to grant the amendment proposed in the Motion;

PURSUANT TO Article 19 of the Statute and Rule 50 of the Rules;

HEREBY DISMISSES the Motion.

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



Judge O-Gon Kwon
Presiding

Dated this second day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁸ *Popović* Decision, paras. 9-10.
⁹ Motion, pp. 53-74 (as marked).