

**UNITED
NATIONS**



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-R77.4
Date: 24 May 2011
Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Presiding
Judge Burton Hall
Judge Howard Morrison

Registrar: Mr John Hocking

Decision: 24 May 2011

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**PUBLIC EDITED VERSION OF “DECISION ON FAILURE TO
REMOVE CONFIDENTIAL INFORMATION FROM PUBLIC
WEBSITE AND ORDER IN LIEU OF INDICTMENT” ISSUED
ON 9 MAY 2011**

The Office of the Prosecutor:

Mr. Norman Farrell

**The *Amicus Curiae* in Case
No. IT-03-67-R77.3**

Mr. Bruce MacFarlane Q.C.

The Accused:

Mr. Vojislav Šešelj

1. Trial Chamber II (“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”) is seised of the issue of removal of confidential information from Vojislav Šešelj’s website (“Website”) in cases No. IT-03-67-R77.2-A, IT-03-67-R77.3 and IT-02-54-Misc.4. On 9 May 2011, the Chamber issued a confidential “Decision on Failure to Remove Confidential Information from Public Website and Order in Lieu of Indictment” thereon. The Chamber hereby issues the public version thereof.

I. FAILURE TO REMOVE FROM WEBSITE CONFIDENTIAL MATERIALS FROM CASE NO. IT-03-67-R77.2

2. On 24 July 2009, this Chamber¹ found Vojislav Šešelj guilty of contempt for knowingly disclosing confidential information pertaining to three witnesses as well as portions of a confidential written statement in a book, in violation of the Šešelj Trial Chamber’s orders granting protective measures to these witnesses, and sentenced him to fifteen months imprisonment.² The Chamber also ordered Vojislav Šešelj to “secure the withdrawal of the [b]ook from his internet website and to file a report with the Registrar on the actions taken to this effect by 7 August 2009”.³ On 10 August 2009, the Registry filed a confidential submission informing the Trial Chamber that it had not received any report or information from Vojislav Šešelj indicating that the book had been withdrawn, and noting that the book remained available on the Website.⁴

3. On 18 August 2009, the B/C/S version of a submission made by Vojislav Šešelj and filed confidentially on the same day appeared on the Website.⁵ On 5 October 2009, the B/C/S version of another submission made by Vojislav Šešelj and filed confidentially the following day appeared on the Website.⁶

¹ At the time, the Chamber was composed of Judge O-Gon Kwon, Presiding, Judge Kevin Parker, and Judge Iain Bonomy.

² *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2, Judgement, public edited version, 24 July 2009, paras. 21–23, and 40.

³ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2, Judgement, public edited version, 24 July 2009, para. 40(3).

⁴ [REDACTED].

⁵ During a status conference in Case No. IT-03-67-T, Šešelj stated that he had no intention of removing the Book from the website prior to the Appeals Chamber rendering its judgment on the pending appeal. *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, T. 14749 (10 September 2009).

⁶ Both of Šešelj’s submissions were filed confidentially at the direction of the Appeals Chamber. *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Decision on Urgent Motions to Remove or Redact Documents Pertaining to Protected Witnesses, confidential, 16 December 2009, p. 3; [REDACTED].

4. In October and November 2009, the Appeals Chamber was seised of two motions filed by the Prosecution and the *Amicus* Prosecutor,⁷ respectively, both of which related to the continued appearance of the book on the Website and requested the Appeals Chamber to take steps to secure its removal.

5. On 16 December 2009, the Appeals Chamber issued the confidential “Decision on Urgent Motions to Remove or Redact Documents Pertaining to Protected Witnesses” (“16 December 2009 Decision”) ordering Vojislav Šešelj and the Website’s registrant, Miroljub Ignjatović, to remove the book as well as submissions related thereto from the Website forthwith.⁸

6. On 13 January 2010, Vojislav Šešelj’s “Response to the Decision on Urgent Motions to Remove or Redact Documents Pertaining to Protected Witnesses” was filed confidentially, urging the Appeals Chamber to set aside the 16 December 2009 Decision in its entirety. As of 13 January 2010, Vojislav Šešelj had also failed to comply with the 16 December 2009 Decision.

7. On 2 March 2010, the Appeals Chamber issued the confidential “Decision on Vojislav Šešelj’s Response to the Decision on Urgent Motions to Remove or Redact Documents Pertaining to Protected Witnesses”, reminding Vojislav Šešelj and Ignjatović of the 16 December 2009 Decision and “that disclosure of protected witnesses’ identities in violation of the Tribunal’s order constitutes interference with its administration of justice and may result in contempt proceedings pursuant to Rule 77 of the Rules of Procedure and Evidence”.⁹

8. On 19 May 2010, the Appeals Chamber affirmed both Vojislav Šešelj’s conviction as well as the sentence imposed by the Trial Chamber and ordered Vojislav Šešelj to immediately implement the 16 December 2009 Decision.¹⁰

9. In a motion filed on 3 August 2010, the Prosecution seeks, *inter alia*, the issuance of an order in lieu of indictment to prosecute Vojislav Šešelj and Ignjatović for contempt under Rule 77(A) and/or Rule 77(A)(ii) of the Rules for violating various orders of the Tribunal by publishing confidential information, including the book, and two submissions related thereto, all of which

⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Urgent Motion to Remove Protected Witness Information from the Internet, 6 October 2009; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, *Amicus* Prosecutor’s Urgent Motion for Order to Remove or Redact Documents on Website, confidential, 13 November 2009.

⁸ The 16 December 2009 Decision also ordered Easy Speedy ApS to remove the Book from Šešelj’s website and directed the Registry to deliver the 16 December 2009 Decision to the relevant authorities of the Republic of Serbia and the Kingdom of Denmark.

⁹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A Decision on Vojislav Šešelj’s “Response to the Decision on Urgent Motions to Remove or Redact Documents Pertaining to Protected Witnesses of 16 December 2009”, confidential, 2 March 2010, p. 3.

¹⁰ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Judgement, public redacted version, 19 May 2010, para. 42.

allegedly identify protected witnesses on the Website.¹¹ On 15 October 2010, the Appeals Chamber issued the confidential and *ex parte* “Decision on Prosecution’s ‘Urgent Motion Under Rule 77 Concerning Violation of Orders of the Appeals Chamber’” (“Appeals Chamber Referral Decision”), referring that part of the Motion to the Trial Chamber and noting that, if additional contempt prosecutions were to be initiated, the Trial Chamber would have the option of prosecuting the matter itself.¹²

10. The Prosecution alleges, *inter alia*, that Vojislav Šešelj “continues to violate orders and ignore warnings by the Appeals Chamber to remove information identifying protected witnesses from his Internet Website”.¹³

11. On 9 May 2011, the Book and two filings related to the procedure detailed in the confidential version of this Decision remained publicly available on the Website.

II. FAILURE TO REMOVE FROM WEBSITE CONFIDENTIAL MATERIALS FROM CASE NO. IT-03-67-R77.3

12. On 4 February 2010, this Chamber issued the 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, issuing an order in lieu of indictment against Vojislav Šešelj on one count of contempt of the Tribunal, punishable under Rule 77(A)(ii) of the Rules, for having disclosed in a book information which may identify 11 protected witnesses in violation of orders of a Chamber. Trial proceedings commenced on 22 February 2011 and are ongoing.

A. The Book in Case IT-03-67-R77.3

13. On 26 April 2010, the *Amicus Curiae* Prosecutor in Case No. IT-03-67-R77.3 filed confidentially the “Prosecutor’s Motion to Remove Document from Website”, requesting the Chamber to, *inter alia*, issue an order requiring Vojislav Šešelj to remove the Book in Case IT-03-67-R77.3 from the Website. On 16 December 2010, the Chamber issued the confidential “Decision on Prosecutor’s Motion for Order to Remove Document from Website” ordering Vojislav Šešelj (i) within 14 days, to secure the withdrawal of the Book in Case IT-03-67-R77.3 from the Website or (ii) within 14 days, to file a report explaining the reasons for not doing so.

¹¹ [REDACTED].

¹² [REDACTED]. Although the Appeals Chamber Referral Decision referred to “the Trial bench” formerly seised of this case, the President later assigned Judge Burton Hall to replace Judge Iain Bonomy and Judge Howard Morrison to replace Judge Kevin Parker. [REDACTED].

¹³ [REDACTED].

14. On 10 January 2011, “Professor Vojislav Šešelj’s Response/Report on the Trial Chamber II Decision of 16 December 2010” was filed confidentially, in which Vojislav Šešelj indicated that he did not intend to remove the Book in Case IT-03-67-R77.3 from his Website. On 31 January 2011, the Chamber issued the confidential “Order to Remove Book from Website”, ordering (i) “Vojislav Šešelj and the registrant of the Website” to remove the Book in Case IT-03-67-R77.3 from the Website no later than 14 February 2011 and (ii) the Registry to report on the implementation of the order by 21 February 2011.

15. On 21 February 2011, the Registry filed the confidential “Registry Rule 33(B) Submission on Order to Remove Book from Website”, indicating, *inter alia*, (i) that Nikola Šešelj was the current registrant of the Website and had responded that he did not intend to comply with the Order, stating “I wish to inform you that I have no intention of acting in accordance with your order since Dr. Vojislav Šešelj is the only person authorised to create the contents of his internet site and who can give me orders on what and when to upload or remove from the site”,¹⁴ and (ii) that the Book in Case IT-03-67-R77.3 remained publicly available on the Website.

16. On 9 May 2011, the Book in Case IT-03-67-R77.3 remained publicly available on the Website.

B. Accused’s Submission in Case IT-03-67-R77.3

17. On 11 February 2011, the *Amicus Curiae* Prosecutor requested the Chamber to issue an order to remove material from the Website, specifically (i) the Accused’s Submission in Case IT-03-67-R77.3, which was filed confidentially upon the order of a Trial Chamber and (ii) a book which was referenced therein and which contained another Accused’s submission, which was also filed confidentially upon the order of a Trial Chamber.

18. On 17 February 2011, the Chamber issued the confidential “Order to Remove Confidential Information from Website” (“17 February 2011 Order”) ordering, *inter alia*, (i) that the Accused’s Submission in Case IT-03-67-R77.3 and the book referenced therein, be removed from the Website no later than 3 March 2011 and (ii) the Registry to report on the implementation of the order by 10 March 2011.

19. On 10 March 2011, the Registry filed the confidential “Submission Pursuant to Rule 33(B) on the Order to Remove Confidential Information from Website”, in which the Registry informed the Chamber, *inter alia*, that (i) Vojislav Šešelj had received a B/C/S translation of the

¹⁴ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Submission Pursuant to Rule 33(B) on Order to Remove Book from Website, confidential, 21 February 2011, para. 3(b) and Annex II to the Submission.

17 February 2011 Order on 21 February 2011, and (ii) the registrant of the Website, Nikola Šešelj had received the 17 February 2011 Order on 22 February 2011 and had replied on 24 February 2011, indicating his intent not to act and stating, “I have already informed you that, as the editor of [the Website], I have absolutely no intention of acting on your instruction and removing from the website books and submissions which I posted on express instructions from my superior, Professor Vojislav Šešelj”.¹⁵

20. As of 9 May 2011, the Accused’s submission in Case IT-03-67-R77.3 and the book referenced therein remained available on the Website.

III. FAILURE TO REMOVE FROM THE WEBSITE CONFIDENTIAL INFORMATION FROM CASE NO. IT-02-54-MISC.4

21. On 9 December 2010, the Prosecution team in Case No. IT-03-67-T filed a confidential urgent request for immediate relief from ongoing violations of protective measures granted to a witness,¹⁶ requesting the Chamber to order the immediate removal of all material that publicly reveals the identity of this witness.

22. On 31 January 2011, the Chamber issued the confidential “Order to Remove Documents from Website” (“31 January 2011 Order in the *Milošević* case”), ordering, *inter alia*, (i) that two submissions in Case No. IT-03-67 be removed from the Website no later than 14 February 2011 and (ii) the Registry to report on the implementation of the order by 21 February 2011.

23. On 21 February 2011, the Registry filed the confidential “Registry Rule 33(B) Submission on Order to Remove Documents from Website”, informing the Chamber that (i) Vojislav Šešelj confirmed receipt of the 31 January 2011 Order and (ii) Nikola Šešelj, the registrant of the Website, had received a copy of the 31 January 2011 Order on 4 February 2011, yet his response dated 15 February 2011 indicated that he did not intend to comply with the 31 January 2011 order.¹⁷

24. As of 9 May 2011, the submissions in Case No. IT-03-67 remain available on the Website.

¹⁵ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Submission Pursuant to Rule 33(B) on the Order to Remove Confidential Information from Website, confidential, 10 March 2011, paras. 3(a), 3(b), Annex II to the Submission.

¹⁶ [REDACTED]. Several matters originally pending before Trial Chamber III in Case No. IT-03-67-T were referred to this Chamber by virtue of the order of Acting President Judge Kwon on 3 December 2010. *Prosecutor v. Slobodan Milošević*, Order Assigning Judges to Decide Motions by the Prosecution for an Order and an Interim Order Directing Vojislav Šešelj to Remove Confidential Information From his Website, confidential, 3 December 2010.

¹⁷ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-Misc.4, Submission Pursuant to Rule 33(B) on the Order to Remove Documents from Website, confidential, 21 February 2011, paras. 3(a), 3(b), Annex II to the Submission.

IV. LAW

25. Rule 77 of the Rules provides, in so far as relevant:

“(A) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who [...]

(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber; [...]

(C) When a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may:

(i) direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt;

(ii) where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings; or

(iii) initiate proceedings itself.

(D) If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may:

(i) in circumstances described in paragraph (C)(i), direct the Prosecutor to prosecute the matter; or

(ii) in circumstances described in paragraph (C)(ii) or (iii), issue an order in lieu of an indictment and either direct *amicus curiae* to prosecute the matter or prosecute the matter itself.

(E) The rules of procedure and evidence in Parts Four to Eight shall apply *mutatis mutandis* to proceedings under this Rule.”

26. The Chamber considers that the list of instances of contempt set forth in Rule 77(A) is not exhaustive.¹⁸ In this respect, the Appeals Chamber has held that each of the forms articulated in Rule 77(A)(i) – (v) “fal[l] within – but does not limit – that inherent power, as each clearly amounts to knowing and wilful interference with the Tribunal’s administration of justice”.¹⁹ Disclosure of information, within the meaning of Rule 77(A)(ii), is to be understood as revelation of information

¹⁸ *Prosecutor v. Domagoj Margetić*, Case No. IT-95-14-R77.6, Judgment on Allegations of Contempt, 7 February 2007, para. 13.

¹⁹ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 26(b).

the confidential status of which has not been lifted,²⁰ including the publication of a witness' identity where protective measures have been granted to avoid such disclosure.²¹

27. The *mens rea* element of contempt, when charged under Rule 77(A)(ii), is the knowledge of the alleged contemnor of the fact that his disclosure of particular information is done in violation of an order of a Chamber.²²

V. CONCLUSION

28. On the basis of the foregoing, the Chamber considers that there are sufficient grounds to proceed against Vojislav Šešelj pursuant to Rule 77(D)(ii) for contempt for having failed to comply with three orders issued by the Chamber and a decision issued by the Appeals Chamber, resulting in the ongoing publication of confidential information in violation of a Chamber's orders.

VI. DISPOSITION

29. For the foregoing reasons, pursuant to Rule 77 of the Rules, the Chamber hereby:

- (1) **INITIATES** contempt proceedings against **VOJISLAV ŠEŠELJ** for knowingly and wilfully failing to comply with a Chamber's order to remove confidential information from the Website;
- (2) **ISSUES** an order in lieu of an indictment, appended in the Annex to this Decision, against **VOJISLAV ŠEŠELJ** on one count of contempt of the Tribunal, punishable under Rule 77(A) and 77(A)(ii) of the Rules, for knowingly and wilfully failing to comply with a Chamber's order to remove confidential information;
- (3) **DECIDES** to prosecute the matter itself;
- (4) **DECLARES** that at a time to be determined **VOJISLAV ŠEŠELJ** shall appear before this Chamber to enter a plea with respect to this count; and
- (5) **DIRECTS** the Registrar to make available to Vojislav Šešelj certain material in the confidential version of this Decision.

²⁰ *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008, para. 10.

²¹ *Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-AR77, Judgement on Appeal by Anto Nobile against Finding of Contempt, 30 May 2001, para. 40(c); *Prosecutor v. Domagoj Margetić*, Case No. IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007, para. 15.

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

Dated this twenty-fourth day of May 2011
At The Hague
The Netherlands



Judge O-Gon Kwon
Presiding

[Seal of the Tribunal]

²² *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2, Judgement, 10 March 2006, para 18; *Prosecutor v. Josip Jović*, Case No. IT-95-14&IT-95-14/-R77, Judgement, 30 August 2006, para. 20.

ANNEX

ORDER IN LIEU OF AN INDICTMENT

VOJISLAV ŠEŠELJ, born in 1954 in Sarajevo, Republic of Bosnia and Herzegovina, and currently on trial before the Tribunal, is charged with one count of contempt of the Tribunal pursuant to Rule 77(A) and Rule 77(A)(ii) of the Rules, as detailed below:

FACTUAL ALLEGATIONS

1. Vojislav Šešelj was ordered to remove various documents revealing confidential information about a number of protected witnesses from Case No. IT-03-67 from his Website. The documents to be removed included three books authored by Vojislav Šešelj and five filings made by him in Case No. IT-03-67-T, Case No. IT-03-67-R77.3 and Case No. IT-03-67-R77.2-A.
2. Vojislav Šešelj acknowledged receipt of the Appeals Chamber's decision and the Chamber's orders to remove the confidential information from his Website on 5 January 2010, 2 February 2011, 2 February 2011, and 21 February 2011, respectively.
3. As of 9 May, the three books and the five filings remained available on Vojislav Šešelj's Website.

CHARGES

By his acts and omissions, **VOJISLAV ŠEŠELJ** committed **Contempt of the Tribunal**, punishable under this Tribunal's inherent power and Rules 77(A) and 77(A)(ii) of the Rules, for knowingly and wilfully interfering with the administration of justice by failing to remove from the Website confidential information in violation of orders of a Chamber.

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

Dated this twenty-fourth day of May 2011
At The Hague
The Netherlands



Judge O-Gon Kwon
Presiding

[Seal of the Tribunal]