IT-03-67-R77.3-A
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UNITED
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	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-A
		Date:	23 April 2012
		Original:	English

IN THE APPEALS CHAMBER

Before: **Judge Arlette Ramaroson, Presiding**
Judge Mehmet Güney
Judge Fausto Pocar
Judge Liu Daqun
Judge Andrésia Vaz

Registrar: **Mr. John Hocking**

Decision of: **23 April 2012**

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

DECISION ON *AMICUS CURIAE* PROSECUTOR'S MOTION TO STRIKE THE APPELLANT'S BRIEF AND URGENT MOTION FOR STAY OF DEADLINE

***Amicus Curiae* Prosecutor:**
Mr. Bruce MacFarlane

The Accused:
Mr. Vojislav Šešelj, *pro se*

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1. The Appeals 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 ("Appeals Chamber" and "Tribunal", respectively) is seised of the "*Amicus Curiae* Prosecutor's Motion to Strike the Appellant's Brief and Urgent Motion for Stay of Deadline", filed by the *Amicus Curiae* Prosecutor ("*Amicus* Prosecutor") on 13 March 2012 ("Motion"). Vojislav Šešelj ("Šešelj") did not file a response.

A. Background

2. On 31 October 2011, the Trial Judgement was rendered in the present case.[1] Šešelj was convicted of one count of contempt of the Tribunal and sentenced to a single term of 18 months' imprisonment to be served concurrently with the sentence of 15 months' imprisonment imposed on 24 July 2009 in Case No. IT-03-67-R77.2.[2]

3. The *Amicus* Prosecutor filed his notice of appeal and appeal brief on 14 November 2011 and 29 November 2011, respectively.[3]

4. In response to a letter filed by Šešelj on 17 November 2011, requesting a stay of his deadlines,[4] the Pre-Appeal Judge issued the Consolidated Briefing Schedule on 11 January 2012, which required Šešelj to file a notice of appeal, if any, within 15 days of receiving the B/C/S translation of the Consolidated Briefing Schedule.[5] Šešelj was also ordered to file an appeal brief, if any, of no more than 9,000 words, within 15 days of filing his notice of appeal.[6]

5. Šešelj received the B/C/S translation of the Consolidated Briefing Schedule on 20 January 2012.[7] He filed his notice of appeal on 2 February 2012 and his Appeal Brief, of 33,606 words, on 16 February 2012.[8]

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[1] *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Public Redacted Version of "Judgement" Issued on 31 October 2011, 31 October 2011 ("Trial Judgement").
[2] Trial Judgement, para. 82.
[3] *Amicus Curiae* Prosecutor Notice of Appeal Against Sentence, 14 November 2011; Amicus Curiae Prosecutor's Appellant Brief on Sentence, 29 November 2011.
[4] Submission no. 482, 17 November 2011 (the English translation of the Bosnian/Serbian/Croatian ("B/C/S") original was filed on 21 November 2011).
[5] Decision on Vojislav Šešelj's Motion for Stay of Time-Limits and Order on Consolidated Briefing Schedule, 11 January 2012 ("Consolidated Briefing Schedule"), para. 7(c).
[6] Consolidated Briefing Schedule, para. 7(d).
[7] *See Procès-Verbal*, 23 January 2012.
[8] Notice of Appeal Against Judgement on Allegations of Contempt of Court of 31 October 2011, 2 February 2012 (confidential) (the English translation of the B/C/S original was filed on 8 February 2012); Appeal of the Judgement for Contempt of Court of 31 October 2011, 16 February 2012 (confidential) (the English translation of the B/C/S original was filed on 8 March 2012) ("Appeal Brief").

6. The present Motion was filed on 13 March 2012. As an interim measure, on 15 March 2012, the Pre-Appeal Judge ordered the stay of deadlines for the filing of the *Amicus* Prosecutor's response brief and Šešelj's brief in reply.[9]

B. Applicable Law

7. Paragraph 8 of the Practice Direction for Filing Written Submissions[10] provides that appeals from decisions rendered under Rule 77 of the Rules of Procedure and Evidence of the Tribunal ("Rules") are subject to paragraph (C)(2) of the Practice Direction on Length,[11] which limits the length of an appellant's brief to 9,000 words. Furthermore, paragraph (C)(7) of the Practice Direction on Length provides that a party must seek authorisation in advance from the Chamber to exceed the prescribed word limits and must provide an explanation of the exceptional circumstances that necessitate the oversized filing.

8. In addition, paragraph 20 of the Practice Direction for Filing Written Submissions provides that, where a party fails to comply with the above-mentioned requirements, the Appeals Chamber may, within its discretion, decide upon an appropriate sanction, which can include an order for clarification or re-filing. The Appeals Chamber may also reject a filing or dismiss submissions contained therein where the filing is not in compliance with the said requirements.[12]

C. Submissions of the Parties

9. The *Amicus* Prosecutor requests that Šešelj's Appeal Brief be struck in its entirety because it violates the word limit imposed by the Consolidated Briefing Schedule, and the relevant practice directions of the Tribunal.[13] The *Amicus* Prosecutor submits that Šešelj failed to seek prior authorisation from the Appeals Chamber to exceed the prescribed word limit[14] and has not presented any exceptional circumstances to justify such a departure.[15] In the alternative to striking Šešelj's Appeal Brief in its entirety, the *Amicus* Prosecutor requests that the Appeals Chamber

[9] Order Staying Deadlines for Respondent's Brief and Appellant's Brief in Reply, 15 March 2012, para. 4. *See also* Motion, paras 19-20.
[10] Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal, IT/155 Rev. 3, 16 September 2005 ("Practice Direction for Filing Written Submissions").
[11] Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005 ("Practice Direction on Length").
[12] Practice Direction for Filing Written Submissions, para. 20.
[13] Motion, paras 1, 9, 20, *referring to* Practice Direction for Filing Written Submissions, para. 8; Practice Direction on Length, para. (C)(2).
[14] Motion, paras 1, 10, 16.
[15] Motion, para. 17.

excise portions of Šešelj's Appeal Brief that are in excess of the word limit, or instruct Šešelj to re-file his Appeal Brief in compliance with the word limit.[16]

D. Discussion

10. The Appeals Chamber notes that Šešelj's Appeal Brief is well in excess of the word limit provided for in the Consolidated Briefing Schedule and the relevant practice directions.[17] In this regard, the Appeals Chamber observes that the word count of Šešelj's Appeal Brief is 33,606 and is therefore 24,606 words over the word limit.[18]

11. The Appeals Chamber notes that Šešelj has made an application to exceed the prescribed word limit within his oversized appeal brief.[19] Although such authorisation should have been sought *in advance*, in the interests of judicial economy, the Appeals Chamber will consider Šešelj's submissions in this regard.

12. Šešelj claims that the sentence of 18 months' imprisonment handed down in the Trial Judgement constitutes exceptional circumstances, and he asserts that he "wishes to explain all the facts (and violations of rights) in detail".[20] However, he makes no submissions as to why he is unable to do so within the prescribed word limit. In these circumstances, the Appeals Chamber finds that Šešelj has failed to demonstrate that exceptional circumstances exist that would justify exceeding the word limit.

13. It appears that Šešelj also seeks an increase in the word limit in order to challenge the monitoring of his communications at the United Nations Detention Unit ("UNDU") and to raise issues regarding his health.[21] The Appeals Chamber notes that such challenges may be made to the Commanding Officer of the UNDU or the Registrar, in separate filings in accordance with Rules 65(B) and 80 to 84 of the Rules Governing Detention.[22] As issues regarding his health and the monitoring of his communications are irrelevant to a request for an extension of the word limit, the Appeals Chamber finds that Šešelj has failed to demonstrate the existence of exceptional circumstances that would justify exceeding the word limit.

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[16] Motion, paras 1, 20.
[17] Consolidated Briefing Schedule, para. 7(d); Practice Direction for Filing Written Submissions, para. 8; Practice Direction on Length, para. (C)(2).
[18] *See* Appeal Brief, p. 94.
[19] Appeal Brief, paras 2-6.
[20] Appeal Brief, para. 3.
[21] Appeal Brief, paras 4-5.
[22] Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal, IT/38/Rev. 9, 21 July 2005 ("Rules Governing Detention").

14. In light of the foregoing, and having due consideration to the interests of justice in these particular proceedings, the Appeals Chamber considers that it is appropriate to strike Šešelj's Appeal Brief in its entirety and provide Šešelj with the opportunity to re-file an appeal brief of no more than 9,000 words.

E. Disposition

15. For the foregoing reasons, the Appeals Chamber hereby **GRANTS** the Motion and:

STRIKES in its entirety Šešelj's Appeal Brief;

LIFTS the stay of the deadlines for the filing of the *Amicus* Prosecutor's response brief and Šešelj's brief in reply;

ORDERS Šešelj to re-file an appeal brief of no more than 9,000 words no later than one week from the date of receipt of the B/C/S version of this Decision;

ORDERS the *Amicus* Prosecutor to file a response brief, if any, of no more than 9,000 words, no later than ten days from the date of receipt of the English translation of Šešelj's re-filed appeal brief; and

ORDERS Šešelj to file a brief in reply, if any, of no more than 3,000 words, no later than four days from the date of receipt of the B/C/S translation of the *Amicus* Prosecutor's response brief.

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

Dated this twenty-third day of April 2012,
At The Hague,
The Netherlands.

Judge Arlette Ramaroson
Presiding