

**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-R77.2
Date: 21 January 2009
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kevin Parker

Registrar: Mr John Hocking, Acting Registrar

Decision: 21 January 2009

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC VERSION

DECISION ON ALLEGATIONS OF CONTEMPT

The Office of the Prosecutor:

Mr. Daryl Mundis
Ms. Christine Dahl

The Respondent:

Mr. Vojislav Šešelj

1. Background

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 seized of a “Prosecution’s Motion under Rule 77 Concerning the Breach of Protective Measures” (“Motion”), filed confidentially and *ex parte* on 10 October 2008 in the case of *Prosecutor v. Vojislav Šešelj* and seeking, *inter alia*, an order in lieu of an indictment to prosecute Vojislav Šešelj for contempt under Rule 77(D)(ii) of the Rules of Procedure and Evidence (“Rules”). The Motion was filed originally before Trial Chamber III, which is trying the case against Vojislav Šešelj. On 29 October 2008, the President of the Tribunal ordered the Chamber to deal with the Motion.

2. The Chamber takes note of a “Prosecution’s Motion for Authorization to Exceed to the Word Limit Applicable to Motions” (“Motion Regarding the Word Limit”), filed confidentially and *ex parte* on 10 October 2008, whereby the Prosecution seeks leave to exceed the permissible word limit¹ in the Motion. The Motion Regarding the Word Limit was filed before the Trial Chamber hearing the *Šešelj* case and was not specifically mentioned in the President’s order assigning the contempt motions to this Chamber. However, given the nature of that Motion, which makes it an inseparable part of the main Motion, the Chamber considers that it is competent to examine the Motion Regarding the Word Limit. The Chamber agrees with the Prosecution that the matter requires detailed submissions and that the oversized filing is thus justified.² It will grant the sought leave.

2. Submissions

3. The Prosecution alleges, *inter alia*, that the accused Vojislav Šešelj knowingly violated orders granting protective measures in respect of three witnesses in his trial by publishing information enabling the identification of these witnesses in a book which he authored (“the book”).³ The Prosecution requests, *inter alia*, that an order in lieu of an indictment be issued against Vojislav Šešelj, pursuant to Rule 77(D)(ii) of the Rules (“the Prosecution’s Request”).⁴

3. Law

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

¹ Proscribed by the Practice Direction on the Length of Briefs and Motions.

² Motion Regarding the Word Limit, para 4.

³ Motion, para 1.

⁴ Motion, paras 1, 41.

“(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; ...

(iv) threatens, intimidates, ... or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness ...

(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.”

5. Disclosure of information, within the meaning of Rule 77(A)(ii), is to be understood as revelation of information the confidential status of which has not been lifted,⁵ including the publication of a witness’ identity where protective measures have been granted to avoid such disclosure.⁶ 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.⁷

4. Protective measures

6. The Prosecution alleges a violation of protective measure orders in respect of three witnesses. Two of these witnesses were given pseudonyms, and image and voice distortion during

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

⁶ *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.

their testimony was ordered. The disclosure to the public of the identity and written statement of another witness was prohibited by an order issued in respect of the supporting material accompanying the indictment against Vojislav Šešelj.⁸ In its decision of 30 August 2007, the Šešelj Trial Chamber ordered that the use of pseudonyms, as well as image and voice distortion, remain applicable in respect of the three witnesses in issue. The Trial Chamber also ordered as follows:⁹

“ix. when sensitive information regarding the witnesses concerned by the present decision is communicated to the Accused and to those of his associates who have signed the confidentiality agreement with the Registry, they shall refrain from revealing the names, addresses, places of residence or any other information which may identify [*sic*] the protected witnesses, and from disclosing this information to any third party except when this information is directly and specifically necessary for the preparation and the presentation of the Defence case;

x. any person to whom confidential information or documents are disclosed in cases mentioned in item ix.) above shall be informed that they are forbidden to copy, reproduce or make them public, or to reveal or disclose them to any person, and that they must return the originals or copies of the documents to the Party that provided them as soon as they are no longer needed for the preparation and presentation of the case;

...

xiv. with the exception of the case provided in item ix.) above, anyone who discloses knowingly and intentionally the name, address or details of a protected witness, or any other information which may reveal their identity, will have violated this decision and may be prosecuted, pursuant to Rules 77 of the Rules, for contempt of the Tribunal;

xv. for the purposes of this decision, ... [t]he term "public" also includes ... those associates of the Accused who have not signed the agreement with the Registry”

7. The name of Vojislav Šešelj features on the cover of the book as the author and he confirmed in court that he was the author of the book.¹⁰ It appears that the book was published after the orders granting protective measures in respect of the three witnesses had been issued.

5. Alleged identification of protected witnesses

8. The book contains extensive and detailed reviews of the evidence of the witnesses in issue, with the pseudonyms of these witnesses featuring in the titles of a few chapters of the book.¹¹

9. The book provides information about one of these witnesses’ profession and place of residence. The pseudonym assigned to that witness for the purposes of the proceedings in the Šešelj

⁷ *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.

⁸ *Prosecutor v. Vojislav Šešelj*, Case No.: IT-03-67-PT, “Decision on Prosecution’s Motion for Order of Non-disclosure”, 13 March 2003, para 3 of the disposition. The Prosecution submits that the witness statement of this witness was disclosed to Vojislav Šešelj as part of the supporting material, with a notice indicating that the statement was not in the public domain; Motion, para 7.

⁹ *Prosecutor v. Vojislav Šešelj*, Case No.: IT-03-67-PT, “Decision on Adopting Protective Measures”, 30 August 2007 (the English translation of the French original was filed on 10 September 2007).

¹⁰ Electronic version of the book appended to the Motion (“Annex 2”).

¹¹ Annex 2.

case is used. Elsewhere in the book, the full name of the witness is provided in connection with his profession and place of residence. There are also references to the name of the witness' wife, her ethnic origins, the place of her parents' residence, and the name of the family with which the witness allegedly exchanged houses.¹² In addition, information is provided about the witness, referring to him by the pseudonym, which corresponds with the information about the witness provided in witness statements quoted elsewhere in the book, where the full name of the witness is used, which may facilitate identification.¹³

10. Another witness' occupation and place of residence are provided in the book. An event is described involving the witness and in one account of the event the witness is referred to by his pseudonym, whereas in another account of the same event his real name is provided. The book quotes a report regarding the witness, which provides his nicknames, his parents' names, his date and place of birth and numerous details of his career.¹⁴

11. As regards the third of the witnesses in issue, the name of his son is provided in the book.¹⁵ The name of the owner of the house which the witness took over in exchange for his own is given.¹⁶ Elsewhere in the book, a statement is re-printed describing the exchange and referring to the witness' real name.¹⁷ A document is re-printed which contains, among other personal details, the addresses of the witness and his wife.¹⁸ Further, portions of a statement made to the Prosecution are quoted with the information that the statement was given by the witness referred to by his real name. The transcript of an interview is included in the book, whereby a member of the "Team" gathering material for the book talks with a person about the witness and informs the interlocutor about the witness' previous profession and workplace.¹⁹

12. Having reviewed the material provided by the Prosecution, the Chamber has reason to believe that Vojislav Šešelj, the apparent author of the book, may be in contempt of the Tribunal by virtue of the disclosure of information that might identify or lead to the identification of protected witnesses and for disclosing parts of a witness statement, in contravention of orders given by the Trial Chamber conducting the trial of Vojislav Šešelj. As indicated earlier, there is evidence that the book was published after the relevant orders had been made. The Chamber is therefore persuaded that it should initiate proceedings against Vojislav Šešelj under Rule 77(C)(iii). The

¹² Annex 2, 266, 274.

¹³ "Supporting Exhibits to Prosecution Motion under Rule 77 Concerning the Breach of Protective Measures" appended to the Motion ("Annex 1"), p 76; Annex 2.

¹⁴ Annex 2.

¹⁵ Annex 1, pp 142, 148; Annex 2.

¹⁶ Annex 1, p 148; Annex 2.

¹⁷ Annex 2.

¹⁸ Annex 2.

¹⁹ Annex 2.

material before it satisfies the Chamber that there are sufficient grounds to proceed against Vojislav Šešelj for contempt, pursuant to Rule 77(D)(ii). The Chamber considers that it is in the interests of justice that the matter be prosecuted by an *amicus curiae*, to be appointed by the Registrar.

6. Prevention of further disclosure

13. The Prosecution submits that the book was published and sold in many copies.²⁰ The Prosecution seeks, *inter alia*, an injunction against any further sales of the book.²¹ Having regard to the fact that the identity of the protected witnesses in issue can only be inferred from various references in the book, rather than being expressly provided, and that the book was published more than a year ago, the Chamber is of the view that measures less stringent than those sought by the Prosecution can prevent the risk of identification. Redactions should be made to the text of the book so that the identification of witnesses is no longer possible. The *amicus curiae*, to be appointed by the Registrar as indicated in the preceding paragraph, should prepare a list of such redactions and submit it to the Chamber.

7. Disposition

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

(1) **GRANTS** the Motion Regarding the Word Limit;

(2) **GRANTS** the Prosecution's Request, in that it:

(a) **INITIATES** contempt proceedings against **VOJISLAV ŠEŠELJ** for knowingly and wilfully disclosing information in knowing violation of an order of a Chamber;

(b) **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)(ii) of the Rules, for knowingly and wilfully disclosing information in knowing violation of an order of a Chamber;

(c) **DIRECTS** the Registrar to appoint an *amicus curiae* prosecutor to prosecute the charge set out in the Annex to this Decision;

(3) **DECLARES** that at a time to be determined **VOJISLAV ŠEŠELJ** shall appear before this Chamber to enter a plea with respect to that charge;

²⁰ Motion, paras 23-24.

²¹ Motion, para 44.

(4) **DIRECTS** the *amicus curiae* prosecutor to submit a list of redactions to the book, as indicated in paragraph 13 of this Decision; and

(5) **DIRECTS** the Registrar to make available to the *amicus curiae* prosecutor:

- copies of the Motion and Annexes thereto,
- copies of the decisions and orders referred to in section 4 of this Decision,
- copies of the portions of transcript of hearing referred to in section 4 of this Decision.

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

Dated this twenty-first day of January 2009
At The Hague
The Netherlands



Judge Carmel Agius
Presiding

[Seal of the Tribunal]

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)(ii) of the Rules, as detailed below:

FACTUAL ALLEGATIONS

1. The Trial Chamber trying the case of *Prosecutor v. Vojislav Šešelj* ordered various protective measures in respect of witnesses. In its “Decision on Adopting Protective Measures” of 30 August 2007, the *Šešelj* Trial Chamber ordered that the use of pseudonyms, as well as image and voice distortion, remain applicable in respect of these witnesses. The Trial Chamber also prohibited the disclosure of “the names, addresses, places of residence or any other information which may identify the protected witnesses, and from disclosing this information to any third party except when this information is directly and specifically necessary for the preparation and the presentation of the Defence case”. In addition, the disclosure of the written statement of a witness was prohibited by the Trial Chamber’s “Decision on Prosecution’s Motion for Order of Non-disclosure” filed on 13 March 2003.
2. After the issuing of these orders and decisions granting protective measures, a book authored by Vojislav Šešelj was published. The book contains numerous references to three witnesses protected by the measures described in the preceding paragraph, including their real names, occupations and places of residence, which enable the identification of these witnesses. The book also contains excerpts of the written statement of one of these witnesses, the disclosure of which was prohibited by the decision of 13 March 2003, referred to in the preceding paragraph.
3. At the time of the publication of the book, Vojislav Šešelj had knowledge of the order prohibiting the disclosure of the written statement of the witness in issue and of the orders adopting protective measures in respect of, and orders specifically prohibiting the disclosure of information which may identify, the three protected witnesses referred to above.

CHARGES

By his acts and omissions, **VOJISLAV ŠEŠELJ** committed **Contempt of the Tribunal**, punishable under this Tribunal’s inherent power and Rule 77(A)(ii) of the Rules, for knowingly and wilfully interfering with the administration of justice by disclosing confidential information in

violation of orders granting protective measures and by disclosing excerpts of the written statement of a witness in a book authored by him.

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

Dated this twenty-first day of January 2009
At The Hague
The Netherlands



Judge Carmel Agius
Presiding

[Seal of the Tribunal]