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Tribunal Pénal
International pour
l'ex-Yougoslavie

JUDGEMENT SUMMARY

(Exclusively for the use of the media. Not an official document)

CHAMBERS

The Hague, 31 October 2011

Contempt Judgement Summary For Vojilav Šešelj

Please find below the summary of the Judgement read out today by Judge Kwon:

Today, Monday 31 October 2011, this Trial Chamber, consisting of Judges O-Gon Kwon (Presiding), Burton Hall and Howard Morrison, is delivering its Judgement on the allegations of contempt against the Accused, Vojislav Šešelj, pursuant to Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal. This is only a summary which does not form part of the Judgement delivered by the Trial Chamber. The only authoritative account of the Trial Chamber's findings is the written Judgement, copies of which will be made available after the hearing. The Amicus Curiae and the Accused will be given a confidential version of the Judgement, and a public redacted version will be available to the public.

On 3 February 2010, the Chamber issued an order in lieu of indictment charging the Accused with having disclosed information which may identify 11 protected witnesses in violation of orders of a Chamber in a Book authored by him.

The Accused did not enter a plea at either the initial appearance conducted by Judge Hall on 29 April 2010 or at the further initial appearance on 6 May 2010, and thus a plea of not guilty was entered on his behalf on the same day pursuant to Rule 62(A)(iv).

The trial began on 22 February 2011. The Amicus Prosecutor did not call any witnesses, but tendered into evidence 73 exhibits. At the close of the Amicus Prosecutor's case, the Chamber granted Accused's request to postpone the start of his case to enable him to prepare his defence. Between 6 and 8 June 2011, the Accused called five witnesses and tendered four documents into evidence.

Rule 77(A) provides that the Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice. In the present case, the Accused is charged with contempt of the Tribunal pursuant to Rule 77(A)(ii) for having disclosed information relating to Tribunal's proceedings in knowing violation of an order of a Chamber. Disclosure of information within the meaning of this Rule includes the publication of a witness's identity where protective measures have been granted to avoid such disclosure. The *mens rea* element for this form of commission of contempt is the knowledge of the alleged contemnor that his disclosure of a particular piece of information is done in violation of an order of a Chamber.

The Chamber shall now turn to its findings and will start with the material element of the offence punishable under Rule 77(A)(ii):

First, the Accused has acknowledged that he is the author of the Book.

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Second, in light of the evidence presented, the Chamber is satisfied that, at the time the Book was published, 10 of the 11 witnesses were the subjects of protective measure decisions or orders issued by the Šešelj Trial Chamber.

Third, the Chamber is also satisfied that the Book contains the identifying information of each of the 10 protected witnesses and suggests that they could be involved in the Šešelj case.

The Chamber is thus satisfied beyond a reasonable doubt that the Book violates protective measures decisions or orders issued by the Šešelj Trial Chamber.

The Chamber shall now turn to the mental element of the offence punishable under Rule 77(A)(ii), namely whether the Accused knew that the information contained in the Book was subject to protective orders or decisions issued by the Šešelj Trial Chamber at the time of its publication.

The Chamber first considers that the Decisions on Protective Measures of 1 June 2005, 30 August 2007, 10 September 2007, and 23 October 2007 were all *inter partes* documents which were provided to the Accused. He was thus fully informed of the protective measures granted by the Šešelj Trial Chamber by the time the Book was published.

The Chamber also notes that on a number of occasions throughout the Šešelj case, the Accused requested that protective measures previously granted to witnesses in that case be altered by requesting their reconsideration or leave to appeal them. It is thus clear to the Chamber that the Accused was aware that protective measures must be varied by the Chamber which orders them, and that he could not simply reveal the identity of witnesses who had been granted protective measures as he saw fit.

Referring to two orders issued in the Šešelj case, the Accused submits that the Šešelj Trial Chamber decided that each witness can eventually decide for himself whether to testify with protective measures. The Chamber recalls that these orders pertained to one particular witness and no other; had the Šešelj Trial Chamber wished to lift the protective measures in place for other witnesses, it would have done so. It did not, and thus the Chamber considers the Accused's contention to be irrelevant to his responsibility pursuant to Rule 77(A)(ii), where the only relevant consideration is whether he "knew that his disclosure of a particular piece of information was done in violation of an order of a Chamber".

The Chamber is thus satisfied beyond a reasonable doubt that the Accused knew he was disclosing information which identified ten of the Witnesses and revealed that they could be involved in the Šešelj case when he published the Book, and that he did so intentionally, with the knowledge that by doing so, he was violating decisions of the Šešelj Trial Chamber.

Accordingly, the Chamber is satisfied beyond a reasonable doubt that the Accused is guilty of the offence of contempt pursuant to Rule 77(A)(ii) of the Rules.

In its determination of the sentence, the Chamber took into consideration the gravity of the offence, as well as the need for deterrence. In particular, the Chamber notes with grave concern the deliberate way in which the protective measure decisions imposed by the Šešelj Trial Chamber were violated, and considers this a serious interference with the administration of justice. The Chamber has also considered the expanded scope of disclosure given the Book's electronic form and availability, as well as the Accused's lack of remorse. The Chamber has also given particular consideration given to the potential adverse impact that the Accused's conduct may have upon witnesses' confidence in the Tribunal's ability to guarantee the effectiveness of protective measures. Furthermore, the Chamber recognises the need to discourage this type of behaviour, and to take such steps as it can to

ensure that there is no repetition of such conduct on the part of the Accused or any other person.

For the foregoing reasons, having considered all the evidence and arguments presented by the parties, pursuant to Rules 54 and 77 of the Rules, the Chamber:

FINDS the Accused, Vojislav Šešelj, GUILTY of one count of contempt of the Tribunal, punishable under Rule 77(A)(ii) of the Rules; and

SENTENCES the Accused to a single term of imprisonment of eighteen months to be served concurrently with the sentence of fifteen months imposed by the Chamber on 24 July 2009 in Case No. IT-03-67-R77.2.

The Chamber stands adjourned.
