



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: 3 April 2009

Original: English

THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL

Before: Judge Patrick Robinson, President

Acting Registrar: Mr. John Hocking

Decision of: 3 April 2009

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON MOTION FOR DISQUALIFICATION
AND ORDER REPLACING A JUDGE
IN A CASE BEFORE A TRIAL CHAMBER**

Amicus Curiae Prosecutor

Mr. Bruce MacFarlane, QC

The Accused

Mr. Vojislav Šešelj

I, **PATRICK ROBINSON**, President 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 (“International Tribunal”),

NOTING the “Prosecution’s Motion under Rule 77 Concerning the Breach of Protective Measures”, filed confidentially and *ex parte* on 10 October 2008 before Trial Chamber III in the case of *Prosecutor v. Vojislav Šešelj*, in which the Prosecution requests, *inter alia*, that an order in lieu of an indictment be issued against Vojislav Šešelj (“Accused”) pursuant to Rule 77(D)(ii) of the Rules of Procedure and Evidence (“Rules”) (“Prosecution Rule 77 Motion”);

NOTING the confidential and *ex parte* “Order Assigning Motions to a Trial Chamber” (Order of 29 October 2008”), issued by myself on 29 October 2008, in which, *inter alia*, I assigned Trial Chamber II to consider the Prosecution Rule 77 Motion;¹

NOTING the *confidential* “Decision on Allegations of Contempt”, issued by Trial Chamber II on 21 January 2009, in which a Bench composed of Judge Carmel Agius, presiding, Judge O-Gon Kwon, and Judge Kevin Parker (“Trial Chamber”), *inter alia*, granted the Prosecution Rule 77 Motion by issuing an order in lieu of an indictment against the Accused pursuant to Rule 77(D)(ii) of the Rules;²

NOTING the “Motion of Professor Vojislav Šešelj for Disqualification of Judge Carmel Agius” (“Motion for Disqualification”), filed before me through the Presiding Judge of Trial Chamber II by Vojislav Šešelj (“Accused”) on 27 March 2009, in which the Accused requests, *inter alia*: (1) the disqualification of Judge Carmel Agius from considering the contempt allegations against him in Case No. IT-03-67-R77.2, *Prosecutor v. Vojislav Šešelj*; and (2) that I appoint, pursuant to Rules 15 and 19 of the Rules, a panel of three Judges from other Chambers to report to me on the merits of the Motion for Disqualification;³

NOTING the “Report Concerning Vojislav Šešelj’s Motion for Disqualification of Judge Agius from Case IT-03-67-R77.2” (“Report”), submitted to me on 2 April 2009 pursuant to Rule 15(B)(i) of the Rules by Judge O-Gon Kwon, indicating that because the Motion for Disqualification requests disqualification of Judge Carmel Agius, who is the Presiding Judge of Trial Chamber II,

¹ On 29 January 2009, I issued an order issuing a public redacted version of the Order of 29 October 2008.
² *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2, Decision on Allegations of Contempt, 21 January 2009, paras 12 and 14. A public version of this decision was issued the same day.
³ Motion of 27 March 2009, pp. 4 and 72.

the Trial Chamber considers that a Judge other than Judge Agius should submit to me the report required under Rule 15(B)(i) of the Rules;

NOTING that attached to the Report is a memorandum dated 2 April 2009 (“Memorandum of 2 April 2009”) from Judge Carmel Agius to Judge O-Gon Kwon and Judge Kevin Parker, in which Judge Agius informs that in his view, the Accused presents no legal grounds that justify granting the Motion for Disqualification but requests nevertheless to be recused from Case No. IT-03-67-R77.2, *Prosecutor v. Vojislav Šešelj*, on the basis that his continued presence in the case would not be conducive to a smooth and expedited process and might be misunderstood given his role during the pre-trial phase;

NOTING that in the Report, Judge Kwon requests, in light of the position taken by Judge Carmel Agius in the Memorandum of 2 April 2009, that another Judge be assigned to replace Judge Carmel Agius in Case No. IT-03-67-R77.2, *Prosecutor v. Vojislav Šešelj*;

CONSIDERING that Rule 15(B)(ii) of the Rules provides that “[f]ollowing the Report of the Presiding Judge, the President shall, if necessary, appoint a panel of three Judges drawn from other Chambers to report to him its decision on the merits of the application”;

FINDING that, given that Judge Carmel Agius has requested his recusal from Case No. IT-03-67-R77.2, *Prosecutor v. Vojislav Šešelj*, it is not necessary to appoint a panel of three Judges to consider the Motion for Disqualification;

NOTING that Rule 19 of the Rules of Procedure and Evidence of the International Tribunal authorizes the President to coordinate the work of the Chambers;

CONSIDERING the trial management and case distribution needs of the International Tribunal;

HEREBY ASSIGN, with immediate effect, Judge Iain Bonomy to replace Judge Carmel Agius on the Bench in Case No. IT-03-67-R77.2, *Prosecutor v. Vojislav Šešelj* as well as on the Bench in all other contempt cases currently pending before him in the case of *Prosecutor v. Vojislav Šešelj*; and

HEREBY DISMISS the Motion for Disqualification.

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

Done this 3rd day of April 2009,
At The Hague,
The Netherlands.



Judge Patrick Robinson
President

[Seal of the International Tribunal]