

**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: 28 October 2011
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Decision: 28 October 2011

IN THE MATTER OF VOJISLAV ŠEŠELJ

PUBLIC

**PUBLIC EDITED VERSION OF “SECOND DECISION ON
FAILURE TO REMOVE CONFIDENTIAL INFORMATION
FROM PUBLIC WEBSITE AND AMENDED ORDER IN LIEU
OF INDICTMENT” ISSUED ON 21 OCTOBER 2011**

Office of the Prosecutor

Mr. Norman Farrell
Mr. Mathias Marcussen

Amicus curiae in Case No. IT-03-67-R77.3

Mr. Bruce MacFarlane

The Accused

Mr. Vojislav Šešelj

THIS TRIAL 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”);

RECALLING the “Order to remove book from website”, issued confidentially on 15 July 2011 by this Trial Chamber in Case No. IT-03-67-Misc.1 (“Order”), whereby the Trial Chamber:

1. granted the “Prosecution’s urgent motion for an order to remove the Accused’s new book from Website”, filed on 16 May 2011 (“Prosecution’s Motion”);¹
2. ordered the Accused and Nikola Šešelj to remove or cause to be removed by 8 August 2011 from the Accused’s website (“Website”) a book referenced therein (“Book”), which the Prosecution alleges contains information which is confidential;²
3. notified the Accused and Nikola Šešelj that failure to comply with the Order may constitute contempt of the Tribunal under Rule 77 of the Rules of Procedure and Evidence (“Rules”), which is punishable by a term of imprisonment not exceeding seven years, a fine not exceeding 100,000 Euros, or both;
4. ordered the Registry to provide copies of the Order to the Accused and Nikola Šešelj, and any company that provides web hosting services to the Website; and
5. ordered the Registry to report on the implementation of the Order by 15 August 2011;

NOTING “Nikola Šešelj’s response to the Trial Chamber order of 15 July and notification of appointment of counsel”, filed on 10 August 2011 (“Nikola Šešelj’s response”), wherein Nikola Šešelj states, *inter alia*, that he intends to carry out solely the orders of Vojislav Šešelj, who, as exclusive owner of the website, is the only person deciding what appears on the Website and changing the passwords, so that without his orders nothing can be removed from the Website;³

NOTING the “Submission pursuant to Rule 33(B) on the order to remove book from website”, filed confidentially by the Registry on 12 August 2011 (“Submission”), wherein the Registry states,

¹ This motion was filed on 16 May 2011 before Trial Chamber III. On 3 June 2011, Trial Chamber III recused itself from examining the motion and referred the matter to the President of the Tribunal, *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.1, “Decision on Prosecution motion to remove the Accused’s new book from the Website”, confidential. On 5 July 2011, assigned this Trial Chamber to consider the motion, *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.1, “Order assigning Judges to a motion by the Prosecution”, confidential.

² Prosecution Motion, para. 1, fn. 2. See also Order, fn. 1.

³ Nikola Šešelj’s response, p. 2.

inter alia, that the Accused acknowledged receipt of the Order on 18 July 2011 and that, as of 12 August 2011, the Book remained publicly available on the Website;⁴

NOTING “the Prosecution’s supplemental annex to its motion for an order to remove the Accused’s new book from website”, filed confidentially on 14 September 2011 (“Supplemental annex”), wherein the Prosecution, noting the response of Nikola Šešelj, states that he is listed in the “Whois” database as “Registrant and Administrator” of the Website;⁵

RECALLING that by the “Public Edited Version of ‘Decision on failure to remove confidential information from public website and order in lieu of indictment’ issued confidentially on 9 May 2011” of 24 May 2011 (“First Decision”), this Trial Chamber, *inter alia*:

1. found that there were sufficient grounds to proceed against the Accused pursuant to Rule 77(D)(ii) for contempt of the Tribunal for having failed to comply with several Chambers’ orders and decisions to remove confidential information from the Website;
2. decided to prosecute the matter itself and issued an order in lieu of indictment charging the Accused with one count of contempt of the Tribunal punishable under Rule 77(A) of the Rules (“Order in lieu of indictment”);

RECALLING that at the initial appearance on 6 July 2011 the Accused pleaded not guilty to the charge in the Order in lieu of indictment;⁶

CONSIDERING the Trial Chamber’s duty pursuant to Articles 20(1) and 22 of the Statute to ensure the protection of victims and witnesses;

CONSIDERING further Rule 77 of the Rules, and the relevant applicable case-law, as set out in the First Decision;⁷

CONSIDERING, in view of the Accused failure to comply with the Order by 8 August 2011, that there are sufficient grounds according to Rule 77(D) to proceed against the Accused for contempt of the Tribunal;

⁴ Submission, paras 2a (referring to *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.1, *Proces-verbal* confirming receipt of the Order, 20 July 2011) and 3.

⁵ Supplemental annex, para. 2, and Annex, p. 3.

⁶ Case No. IT-03-67-R77.4-I, 6 July 2011, T. 8.

⁷ First Decision, paras 25-27.

CONSIDERING that in the interests of trial management and in order to ensure the Accused's right to an expeditious trial, to amend the Order in lieu of indictment so that the Accused's failure to comply with the Order may be joined to the Order in lieu of indictment;

CONSIDERING that the inclusion of the Accused's failure to comply with the Order introduces "a basis for conviction that is factually [...] distinct from any already alleged in the indictment"⁸ and therefore constitutes a new charge to which the Accused must plea;

PURSUANT TO Rules 50 and 77 of the Rules;

AMENDS the Order in lieu of indictment, as attached to this Decision, to include the Accused's failure to comply with the Order;

DECLARES that at a time to be determined the Accused shall appear before this Trial Chamber to enter a plea with respect to the failure to comply with the Order;

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



Judge O-Gon Kwon
Presiding

Dated this twenty-eighth day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

⁸ *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment, 17 December 2004, para. 34; *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-PT, Written Reasons for Decision on Prosecution Motion to Amend the Second Amended Indictment, 19 December 2009, para. 25.

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 four 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, 21 February 2011, and 18 July 2011 respectively.
3. As of 9 May, the four 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.