



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: 5 April 2012

Original: English

IN TRIAL CHAMBER II

Before: Judge Stefan Trechsel, Presiding
Judge O-Gon Kwon
Judge Melville Baird

Registrar: Mr. John Hocking

Decision: 5 April 2012

IN THE MATTER OF VOJISLAV ŠEŠELJ

PUBLIC

**PUBLIC EDITED VERSION
OF THE THIRD DECISION ON FAILURE TO
REMOVE CONFIDENTIAL INFORMATION FROM PUBLIC
WEBSITE AND AMENDED ORDER IN LIEU OF
INDICTMENT ISSUED ON 29 MARCH 2012**

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 that on 9 May 2011 (“First Decision), the Trial Chamber, *inter alia*:

1. found that there were sufficient grounds to proceed against the Accused pursuant to Rule 77(D)(ii) of the Rules of Procedure and Evidence (“Rules”) for contempt of the Tribunal for having failed to comply with several Chambers’ orders and decisions to remove confidential information from the Accused’s website, www.vseselj.com (“Website”); and
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”);¹

RECALLING that at the initial appearance on 6 July 2011 the Accused pleaded not guilty to the charges in the Order in lieu of indictment;²

RECALLING that on 21 October 2011 the Trial Chamber amended the Order in lieu of indictment to include the Accused’s failure to comply with an order of the Trial Chamber, issued on 15 July 2011, to remove from the Website by 8 August 2011 a book referenced therein;³

RECALLING that at a further appearance on 11 November 2011 the Trial Chamber entered a plea of not guilty on the Accused’s behalf in respect of the added charge;⁴

RECALLING that on 3 November 2011, the Trial Chamber (“Decision”), *inter alia*:⁵

1. ordered the Accused to remove or cause to be removed a confidential submission from the Website no later than 15 November 2011;

¹ See Public edited version of “Decision on failure to remove confidential information from public website and order in lieu of indictment, confidential” issued on 9 May 2011, public, 24 May 2011.

² *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4-I, Initial Appearance, 6 Jul 2011, T. 8.

³ See 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”, public, 28 Oct 2011, with further references. See also *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.1, Order to remove book from website, confidential, 15 Jul 2011, and *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.1, Prosecution urgent motion for an order to remove the Accused’s new book from website”, confidential, 16 May 2011.

⁴ Further appearance, 11 Nov 2011, T. 37.

⁵ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.3, Decision on Prosecution’s urgent motion for an order to remove submission [redacted], confidential, 3 Nov 2011.

2. notified the Accused that failure to comply with this order may constitute contempt of the Tribunal under Rule 77, which is punishable by a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both;
3. ordered the Registry to provide copies of the Decision to the Accused, and any company that provides web hosting services to the Website; and
4. ordered the Registry to report on the implementation of the Decision no later than 18 November 2011;⁶

NOTING that the Accused received the Decision on 4 November 2011;⁷

NOTING that on 18 November 2011 the Registrar reported that the confidential submission remained publicly available on the Website as of that date;⁸

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 Rule 77 of the Rules and the applicable case-law as set out in the First Decision;⁹

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

CONSIDERING that it is in the interests of trial management and the Accused's right to an expeditious trial to amend the Order in lieu of Indictment to include the Accused's failure to comply with the Decision;

CONSIDERING that the inclusion of the Accused's failure to comply with the Decision introduces "a basis for conviction that is factually [...] distinct from any already alleged in the indictment"¹⁰ and, therefore, constitutes a new charge to which the Accused must plead;

⁶ Decision, p. 2-3. See also *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.3, Prosecution's urgent motion for an order to remove submission [redacted], confidential, 27 Sep 2011 ("Motion"), and *Prosecutor v. Vojislav Šešelj*, Case No. IT-093-67-Misc.3, Order assigning Judges to a motion by the Prosecution, confidential, 28 Oct 2011, whereby the Acting President assigned the Motion to this Trial Chamber.

⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.3, *Proces-verbal*, confidential, 9 Nov 2011.

⁸ *Prosecutor v. Vojislav Šešelj*, Case No. IT-093-67-Misc.3, Registrar's submission pursuant to Rule 33(B) of the Rules regarding Trial Chamber's decision on Prosecution's urgent motion for an order to remove submission [redacted], confidential, 18 Nov 2011. See also *Prosecutor v. Vojislav Šešelj*, Case No. IT-093-67-Misc.3, Further Registrar's submission pursuant to Rule 33(B) of the Rules regarding Trial Chamber's decision on Prosecution's urgent motion for an order to remove submission [redacted], confidential, 23 Nov 2011.

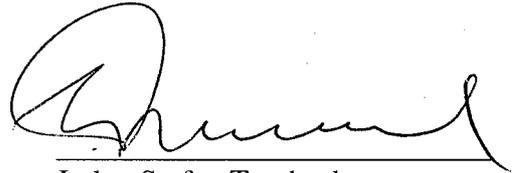
⁹ First Decision, paras 25-27.

PURSUANT TO Rules 50 and 77 of the Rules;

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

ORDERS that the Accused shall appear before this Trial Chamber at a date to be decided to enter a plea with respect to his failure to comply with the Decision.

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



Judge Stefan Trechsel
Presiding

Dated this fifth day of April 2012

At The Hague

The Netherlands

[Seal of the Tribunal]

¹⁰ *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-PT, Decision on Prosecutor's motion seeking leave to amend the indictment, 17 Dec 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 Dec 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 Rules 77(A) and 77(A)(ii) of the Rules, as detailed below:

FACTUAL ALLEGATIONS

1. Vojislav Šešelj is responsible for a website, www.vseselj.com ("Website"), on which he has published confidential information in breach of Chamber orders to remove the information. The material ordered to be removed are four books written by Vojislav Šešelj and six confidential filings in Case Nos. IT-03-67-T and IT-03-67-R77.2-A, all of which reveal confidential information about a number of protected witnesses.
2. Vojislav Šešelj has acknowledged receipt of the orders which require him to remove the books and the confidential filings.
3. As of dates set in the orders, the books and the confidential filings remained publicly available on the 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.