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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, 28 June 2012

Contempt Judgement Summary for Vojislav Šešelj

Please find below the summary of the Judgement read out today by Judge Trechsel.

In this case, it is the Trial Chamber itself which prosecutes the Accused for contempt of the Tribunal, punishable under the Tribunal's inherent power and Rules 77 of the Rules of Procedure and Evidence. The initial indictment was issued on 9 May 2011 and was amended on 21 October 2011 and again on 29 March 2012.

The Accused is charged with one count of contempt for knowingly and wilfully interfering with the administration of justice by failing to comply with the following Chambers orders to remove from his website material revealing confidential information about a number of protected witnesses:

- On 16 December 2009, the Appeals Chamber ordered the removal of a book the Accused has authored and his notice of appeal and appeal brief filed confidentially in a previous contempt case;
- On 31 January 2011, Trial Chamber II ordered the Accused to remove a second book and two confidential submissions;
- On 17 February 2011, Trial Chamber II ordered the Accused to remove a third book and a confidential submission;
- On 15 July 2011, Trial Chamber II ordered the Accused to remove a fourth book; and
- On 3 November 2011, Trial Chamber II ordered the Accused to remove a confidential submission.

These orders were issued in several cases, including in the main trial against Vojislav Šešelj and in previous contempt proceedings where he was found guilty for having published confidential information.

At the initial appearance on 6 July 2011 and the further appearance on 17 April 2012, the Accused pleaded not guilty to the charges. At the further appearance on 4 November 2011, the Accused did not enter a plea, wherefore a plea of not guilty was entered on his behalf pursuant to Rule 62 at a further appearance on 11 November 2011.

Several pre-trial matters arose in this case, which have a bearing on the trial itself. The Chamber will describe them briefly, before coming to its substantive findings.

At a status conference on 19 March 2012, the Accused stated that he would testify himself and that a legal associate of his, assigned to the Accused's main trial, would conduct the examination-in-chief. The Accused also stated that he intended to request the

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disqualification of Judge Kwon. In a written decision of 24 April 2012, the Chamber ordered the Accused to file his request for disqualification of Judge Kwon in writing within seven days of reception of the translation of the Chambers 24 April decision. By the same deadline the Accused was also to file his witness and exhibit lists.

On 15 May 2012, and in compliance with the deadline set, the Accused filed a witness list. However, he did not file any written request for the disqualification of Judge Kwon. According to the witness list, the Accused would be the only witness in the case.

On 30 May 2012, the Chamber was informed that the Registry's Office of Legal Aid and Detention Matters, OLAD, had granted the Accused's request that a legal associate of his from the main trial be allowed a privileged visit to the Detention Unit in preparation for the trial in this case. OLAD had, however, denied the Accused's request for his case manager in the main trial to participate.

The Chamber scheduled the pre-trial conference for 12 June 2012, with trial to be held immediately thereafter. It also ruled that the legal associate could conduct the examination-in-chief of the Accused. At the pre-trial conference, the Accused submitted, *inter alia*, that he had been denied the right to legal assistance due to OLAD's denial of his request regarding the case manager. The Accused requested reconsideration of the Chamber's decision so as to allow the case manager to appear. Having adjourned to deliberate, the Chamber ruled that it would not reconsider its decision. The Accused then stated that in the absence of his legal advisor and case manager he would not be able to present a defence because there was no one to conduct the examination-in-chief.

The Chamber held that this concluded the pre-trial conference and moved to trial. It noted that the Accused had received the indictment and the supporting material in the case. The Chamber then invited the Accused to present a defence by taking the stand, stating that it would conduct the examination. The Accused repeated that he was unable to present a defence and that he did not wish to participate in the proceedings until he was given the possibility of having both the legal associate and the case manager present. After another adjournment to consider the Accused's submissions, the Chamber ruled that the trial would be adjourned one week, until 18 June 2012. The Chamber also repeated that the legal associate was welcome but that the use of a case manager was not warranted. It also gave the Accused a warning to the effect that if he persisted in his attitude, the Chamber would go on with the trial.

On 18 June 2012, the legal associate was not present. The Chamber invited the Accused to take the stand, noting that it would give him the possibility to state his view on the facts of the case rather than question him. The Accused stated that he refused to mount a defence, submitting that he had been denied his procedural rights to have a legal associate and a case manager present.

Following this, the Chamber noted that all material germane to the trial was on the record and thereafter invited the Accused to make final submissions. In his final submissions, the Accused argued, *inter alia*, that the proceedings were biased and noted that the case manager had been assigned by OLAD to the Accused's main trial and to previous contempt proceedings. The Accused also submitted that the Chamber had prevented him from mounting a defence. The Chamber thereafter closed the trial proceedings.

I will now turn to the merits of the case. The Tribunal possesses an inherent jurisdiction to ensure that its exercise of the jurisdiction given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded. Rule 77(A) provides that the Tribunal, in the exercise of this inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice.

The material element of the crime of interfering with the administration of justice includes any deliberate conduct which creates a real risk that confidence in the Tribunal's ability to grant effective protective measures would be undermined. A violation of a court order *as such* constitutes an interference. The mental element is established where an accused wilfully and knowingly interfered with the administration of justice.

The Chamber has examined the case under Rule 77(A), as opposed to Rule 77(A)(ii), because the Accused is charged with contempt for failing to comply with Chambers orders to remove confidential material from the website, not with disclosing the confidential material as such.

With respect to the material element, the Chamber has found that by virtue of the orders issued by various chambers, the Accused was obligated to remove the books and confidential submissions from his website. It has been established that he failed to comply with these orders. It is not disputed that the Accused has been in a position to take positive measures to remove, or cause to be removed, the material in question. In this respect, the Trial Chamber has noted his statements regarding certain submissions made at a hearing in the main *Šešelj* trial and his written submission, filed before Trial Chamber II, that he did not intend to remove one of the books. The Chamber has also considered statements of the Accused during the trial in the second contempt case against him, which show that he controls what is placed on the website. Lastly, the Chamber has considered a submission, filed before the Chamber by the website's registrant, that the Accused is the (quote) "sole owner of the website and exclusively decides what will appear" on it (unquote).

With respect to the mental element, the Chamber has noted the numerous receipts which the Accused has submitted confirming receipt both of the orders with which he has failed to comply, and underlying decisions and submissions. The Chamber has noted that the Accused explicitly stated with respect to the one of his books that he did not intend to comply with the relevant order to remove it. The Chamber has also noted his statement to Trial Chamber III in the main *Šešelj* trial that he had confidential material on the website pertaining to a protected witness.

For these reasons, the Chamber is satisfied that the material element of contempt pursuant to Rule 77(A) has been proved beyond a reasonable doubt and that the Accused was aware of the orders and his obligation to remove the confidential material from the website. Therefore, the Chamber has found the Accused guilty of contempt of the Tribunal for knowingly and wilfully interfering with its administration of justice by failing to comply with Chambers orders.

Turning now to the issue of sentencing, pursuant to Rule 77(G) the maximum penalty that may be imposed on a person found to be in contempt is a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both. Factors to be taken into account in determining sentence are the gravity of the contempt and the need to deter repetition and similar conduct by others. The Chamber has also considered whether there are any aggravating and mitigating circumstances.

This trial concerns a grave case of contempt of court arising out of failure to comply with Tribunal orders. The Orders and Decisions, of which the Accused is aware, impose upon him an obligation to remove or cause to be removed the confidential material from the website. Non-compliance with such orders is a serious matter, which not only interferes with the administration of justice but risks undermining public confidence in the Tribunal and, thereby, the effectiveness of its judicial function, including its ability to grant effective protective measures where necessary.

The Chamber has considered the Accused's repeated defiance of the Tribunal's authority to be an aggravating factor. The repetitious nature of his conduct is demonstrated by his continuing refusal to obey the orders requiring him to remove confidential material which he has disclosed on many occasions over the course of several years. This flagrant

disregard for Chambers orders amounts to a direct attack upon the judicial authority of the Tribunal.

The Accused has two previous convictions for contempt of court. In both cases, he was convicted for revealing confidential information and evidence relating to protected witnesses in two of the books at issue in the present case. These convictions have been considered as aggravating factors.

The Trial Chamber has considered whether there exist any mitigating circumstances, such as an indication of remorse, but holds that there are none.

For these reasons, the Trial Chamber will impose a penalty which recognises the gravity of the Accused's crime in this case and the need for deterrence.

Having found you guilty of one count of contempt of the Tribunal pursuant to Rules 54 and 77 of the Rules, the Chamber, by majority, Judge Trechsel dissenting, sentence you to a single term of imprisonment of two years.

I have appended a dissenting opinion concerning the sentence imposed - I would have favored a punishment considerably less severe.

The hearing is adjourned.
