



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-R77.3-A

Date: 6 July 2012

Original: English

**IN THE APPEALS CHAMBER**

**Before:** Judge Arlette Ramaroson, Presiding  
Judge Mehmet Güney  
Judge Fausto Pocar  
Judge Liu Daqun  
Judge Andrézia Vaz

**Registrar:** Mr. John Hocking

**Decision:** 6 July 2012

**PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

***PUBLIC***

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**DECISION ON VOJISLAV ŠEŠELJ'S SUBMISSION NO. 491 AND  
ON THE *AMICUS* PROSECUTOR'S MOTION TO STRIKE  
VOJISLAV ŠEŠELJ'S NOTICE OF APPEAL AND TO CLOSE  
THE CASE**

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**The Office of the Prosecutor:**

Mr. Bruce MacFarlane

**Counsel for the Accused:**

Mr. Vojislav Šešelj, *pro se*

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1. The Appeals 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 (“Appeals Chamber” and “Tribunal”, respectively) is seized of the “*Amicus* Prosecutor’s Motion for Order Striking Notice of Appeal and Closing the Case”, filed by the *Amicus Curiae* Prosecutor (“*Amicus* Prosecutor”) on 21 May 2012 (“Motion”). Vojislav Šešelj (“Šešelj”) did not respond to the Motion. The Appeals Chamber is also in receipt of the “Response of Professor Vojislav Šešelj to the Decision on *Amicus Curiae* Prosecutor’s Motion to Strike the Appellant’s Brief and Urgent Motion for Stay of Deadline”, filed by Šešelj confidentially on 2 May 2012 (“Submission No. 491”).<sup>1</sup>

## I. BACKGROUND

2. On 31 October 2011, the Trial Judgement was rendered in the present case.<sup>2</sup> Šešelj was convicted of one count of contempt of the Tribunal and sentenced to a single term of 18 months’ imprisonment to be served concurrently with the sentence of 15 months’ imprisonment imposed on 24 July 2009 in Case No. IT-03-67-R77.2.<sup>3</sup>

3. The *Amicus* Prosecutor filed his notice of appeal and appeal brief on 14 November 2011 and 29 November 2011, respectively.<sup>4</sup>

4. In response to a letter filed by Šešelj on 17 November 2011, requesting a stay of his deadlines,<sup>5</sup> the Pre-Appeal Judge issued a Consolidated Briefing Schedule on 11 January 2012, which required Šešelj to file a notice of appeal, if any, within 15 days of receiving the B/C/S translation of the Consolidated Briefing Schedule.<sup>6</sup> Šešelj was also ordered to file an appeal brief, if any, of no more than 9,000 words, within 15 days of filing his notice of appeal.<sup>7</sup>

5. Šešelj received the B/C/S translation of the Consolidated Briefing Schedule on 20 January 2012.<sup>8</sup> He filed his Notice of Appeal on 2 February 2012 and his Appeal Brief, of 33,606 words, on 16 February 2012.<sup>9</sup>

<sup>1</sup> The English translation of the Bosnian/Serbian/Croatian (“B/C/S”) original was filed on 9 May 2012.

<sup>2</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Public Redacted Version of “Judgement” Issued on 31 October 2011, 31 October 2011 (“Trial Judgement”).

<sup>3</sup> Trial Judgement, para. 82.

<sup>4</sup> *Amicus Curiae* Prosecutor Notice of Appeal Against Sentence, 14 November 2011; *Amicus Curiae* Prosecutor’s Appellant Brief on Sentence, 29 November 2011.

<sup>5</sup> Submission no. 482, 17 November 2011 (the English translation of the B/C/S original was filed on 21 November 2011).

<sup>6</sup> Decision on Vojislav Šešelj’s Motion for Stay of Time-Limits and Order on Consolidated Briefing Schedule, 11 January 2012 (“Consolidated Briefing Schedule”), para. 7(c).

<sup>7</sup> Consolidated Briefing Schedule, para. 7(d).

<sup>8</sup> See *Procès-Verbal*, 23 January 2012.

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6. On 13 March 2012, the *Amicus* Prosecutor filed a motion to strike Šešelj's oversized Appeal Brief, which included an urgent request for a stay of the proceedings until a decision could be rendered on the matter.<sup>10</sup> As an interim measure, on 15 March 2012, the Pre-Appeal Judge ordered the stay of deadlines for the filing of the *Amicus* Prosecutor's response brief and Šešelj's brief in reply.<sup>11</sup>

7. On 23 April 2012, the Appeals Chamber issued a decision striking Šešelj's oversized Appeal Brief and ordered him to re-file an appeal brief of no more than 9,000 words no later than one week from the date of receipt of the B/C/S version of the decision.<sup>12</sup> Šešelj received the B/C/S translation of the Decision on the Motion to Strike on 25 April 2012,<sup>13</sup> but failed to re-file an appeal brief of no more than 9,000 words within the prescribed time-limit.

## II. APPLICABLE LAW

8. The Appeals Chamber has inherent discretionary power to reconsider its own previous decisions other than a final judgement.<sup>14</sup> A motion for reconsideration cannot succeed unless the applicant has demonstrated the existence of a clear error of reasoning in the impugned decision, or particular circumstances justifying reconsideration in order to prevent an injustice.<sup>15</sup>

9. Pursuant to Rule 108 of the Rules of Procedure and Evidence of the Tribunal ("Rules"):

A party seeking to appeal a judgement shall, not more than thirty days from the date on which the judgement was pronounced, file a notice of appeal, setting forth the grounds. The Appellant should also identify the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and the relief sought. [...]

<sup>9</sup> Notice of Appeal Against Judgment on Allegations of Contempt of Court of 31 October 2011, 2 February 2012 (confidential) (the English translation of the B/C/S original was filed on 8 February 2012) ("Notice of Appeal"); Appeal of the Judgement for Contempt of Court of 31 October 2011, 16 February 2012 (confidential) (the English translation of the B/C/S original was filed on 8 March 2012) ("Appeal Brief").

<sup>10</sup> *Amicus Curiae* Prosecutor's Motion to Strike the Appellant's Brief and Urgent Motion for Stay of Deadline, 13 March 2012, paras 1, 19-20.

<sup>11</sup> Order Staying Deadlines for Respondent's Brief and Appellant's Brief in Reply, 15 March 2012, para. 4.

<sup>12</sup> Decision on *Amicus Curiae* Prosecutor's Motion to Strike the Appellant's Brief and Urgent Motion for Stay of Deadline, 23 April 2012 ("Decision on the Motion to Strike"), para. 15.

<sup>13</sup> See *Procès-Verbal*, 27 April 2012.

<sup>14</sup> See, e.g., *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Appeals Chamber's Decision of 8 December 2009, 22 January 2010 ("*Šljivančanin* Decision"), p. 2; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Appellant's Motion for Reconsideration and Extension of Time Limits, 30 January 2007 ("*Hadžihasanović and Kubura* Decision"), para. 9; *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Zoran Žigić's "Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005", 26 June 2006, para. 9.

<sup>15</sup> See, e.g., *Ildephonse Hategekimana v. The Prosecutor*, Case No. ICTR-00-55B-A, Decision on Ildephonse Hategekimana's Second Motion for an Extension of Time to File His Appellant's Brief, 20 May 2011, para. 6; *Šljivančanin* Decision, p. 2; *Hadžihasanović and Kubura* Decision, para. 9.

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10. The Practice Direction on Formal Requirements for Appeals from Judgement (“Practice Direction on Formal Requirements”)<sup>16</sup> provides as follows:

1. A party seeking to appeal from a judgement of a Trial Chamber (“Appellant”) shall file, in accordance with the Statute of the International Criminal Tribunal for the Former Yugoslavia (“Statute”), in particular Article 25 of the Statute, and the Rules, a Notice of Appeal containing, in the following order:

- (a) the date of the judgement;
- (b) the specific provision of the Rules pursuant to which the Notice of Appeal is filed;
- (c) the grounds of appeal, clearly specifying in respect of each ground of appeal:
  - (i) any alleged error on a question of law invalidating the decision, and/or
  - (ii) any alleged error of fact which has occasioned a miscarriage of justice;
  - (iii) an identification of the finding or ruling challenged in the judgement, with specific reference to the page number and paragraph number;
  - (iv) an identification of any other order, decision or ruling challenged, with specific reference to the date of its filing, and/or transcript page;
  - (v) the precise relief sought;
- (d) if relevant, the overall relief sought.

[...]

17. Where a party fails to comply with the requirements laid down in th[e] Practice Direction, or where the wording of a filing is unclear or ambiguous, a designated Pre-Appeal Judge or the Appeals Chamber may, within its discretion, decide upon an appropriate sanction, which can include an order for clarification or re-filing. The Appeals Chamber may also reject a filing or dismiss submissions therein.

### III. SUBMISSION OF THE PARTIES

11. In his Submission No. 491, Šešelj “reject[s] with indignation the quasi-legal demands set out in paragraph 15 of the [Decision on the Motion to Strike]”.<sup>17</sup> Šešelj argues that his sentence of 18 months’ imprisonment handed down in the Trial Judgement, his ill health, and issues relating to the monitoring of his communications with his legal advisers are exceptional circumstances that justify exceeding the prescribed word limit for an appeal brief in contempt proceedings.<sup>18</sup> Šešelj further argues that Florence Hartmann was allowed to file an appeal brief of approximately 100 pages in relation to contempt proceedings that were comparably less difficult and less

<sup>16</sup> Practice Direction on Formal Requirements for Appeals from Judgment, IT/201, 7 March 2002.

<sup>17</sup> Submission No. 491, para. 8. *See also* Submission No. 491, para. 4.

<sup>18</sup> Submission No. 491, paras 3-6.

complicated than the present proceedings and for which a much lighter sentence was imposed.<sup>19</sup> According to Šešelj, the Decision on the Motion to Strike places practice directions concerning word limits higher in the legal hierarchy than the Statute of the Tribunal (“Statute”) and the Rules.<sup>20</sup> Šešelj concludes that the Decision on the Motion to Strike “grossly violated the rights guaranteed to every accused person under Article 21 of the Statute”.<sup>21</sup>

12. The *Amicus* Prosecutor submits that Submission No. 491 is a protest against the Decision on the Motion to Strike because it intends to respond to and it rejects the Decision on the Motion to Strike.<sup>22</sup>

13. The *Amicus* Prosecutor further submits that Submission No. 491 does not constitute Šešelj’s appeal brief as it fails to develop any of Šešelj’s eight grounds of appeal advanced in his Notice of Appeal.<sup>23</sup> The *Amicus* Prosecutor argues that the Decision on the Motion to Strike ordered Šešelj to re-file an appeal brief of no more than 9,000 words within a week of receiving the B/C/S translation of the decision, yet Šešelj failed to do so.<sup>24</sup> According to the *Amicus* Prosecutor, Šešelj has made a conscious decision not to re-file an appeal brief and abandon his appeal altogether.<sup>25</sup> The *Amicus* Prosecutor points out that in previous cases the Appeals Chamber has considered as abandoned any grounds of appeal not argued in a re-filed appeal brief<sup>26</sup> and therefore argues that, *a fortiori*, all grounds of appeal ought to be considered abandoned if an entire notice of appeal has deliberately been left un-pursued, as in the present case.<sup>27</sup>

14. The *Amicus* Prosecutor submits that, in any event, Šešelj’s Notice of Appeal should be struck because it does not conform to the requirements of the Rules and the relevant practice directions as it: (a) sets out argumentation on fact and law in relation to nearly every ground of appeal; (b) alleges facts not part of the record on appeal, in particular, in grounds 4, 6, and 8; (c) makes assumptions and presents theories as fact when there is no evidence to support such contentions; and (d) seeks to shape the issue of *mens rea* by describing what was in Šešelj’s mind at the time of the offence by way of purported facts that were not screened for relevance,

<sup>19</sup> Submission No. 491, para. 7.

<sup>20</sup> Submission No. 491, para. 7.

<sup>21</sup> Submission No. 491, para. 8.

<sup>22</sup> Motion, paras 17, 19-20.

<sup>23</sup> Motion, paras 17-18, 20-21.

<sup>24</sup> Motion, para. 21.

<sup>25</sup> Motion, para. 23.

<sup>26</sup> Motion, para. 24, referring to *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Further Motions to Strike, 17 December 2009 (“*Hartmann* Decision on Further Motions to Strike”), para. 12.

<sup>27</sup> Motion, para. 25.

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admissibility, or propriety, which were not tested in cross-examination, and which are inconsistent with the record on appeal.<sup>28</sup>

15. The *Amicus* Prosecutor requests that the Appeals Chamber strike Šešelj’s Notice of Appeal and declare the case closed as regards his appeal.<sup>29</sup>

#### IV. DISCUSSION

##### A. Šešelj’s Submission No. 491

16. The Appeals Chamber considers that it would not be appropriate to construe Submission No. 491 as an appeal brief when it only briefly pursues some lines of reasoning contained in Šešelj’s Notice of Appeal. Moreover, Šešelj has not given any indication that he wishes this submission to be construed as such.

17. The Appeals Chamber notes that the title of Šešelj’s Submission No. 491 suggests that it is a “response” to the Decision on the Motion to Strike<sup>30</sup> and contains strong criticism of that decision.<sup>31</sup> Although Submission No. 491 does not contain an explicit request for reconsideration of the Decision on the Motion to Strike, the Appeals Chamber construes Šešelj’s Submission No. 491 as a motion for reconsideration.<sup>32</sup>

18. Šešelj largely repeats arguments from his request, in the Appeal Brief, for an *ex-post* extension of its word limit, namely in relation to the length of the sentence imposed on him by the Trial Judgement, his health, and issues relating to the monitoring of his communications with his legal advisers.<sup>33</sup> The Appeals Chamber considers that Šešelj fails to identify a clear error of reasoning in the Decision on the Motion to Strike or the existence of particular circumstances that justify reconsideration in order to prevent an injustice, as he merely repeats previously rejected arguments.<sup>34</sup> The Appeals Chamber therefore finds that Šešelj has not demonstrated that the Decision on the Motion to Strike warrants reconsideration in this regard.

19. The Appeals Chamber further notes that Šešelj puts forth two additional arguments in order to challenge the Decision on the Motion to Strike and in support of his contention that exceptional

<sup>28</sup> Motion, para. 26.

<sup>29</sup> Motion, paras 1, 27.

<sup>30</sup> See Submission No. 491, p. 1.

<sup>31</sup> See Submission No. 491, paras 3-8.

<sup>32</sup> The Appeals Chamber notes that the *Amicus* Prosecutor did not file a response to Šešelj’s Submission No. 491, which is likely due to the fact that the nature of this filing is not readily apparent. The Appeals Chamber will nevertheless, in the interests of judicial economy and in the specific circumstances before it, render a decision in relation to Submission No. 491 without any response from the *Amicus* Prosecutor.

<sup>33</sup> See Submission No. 491, paras 3-6; Appeal Brief, paras 3-5. See also Decision on the Motion to Strike, paras 12-13.

circumstances exist warranting an increase in the word limit for his Appeal Brief. First, comparing the present case with the appeal proceedings in the case against Florence Hartmann, Šešelj maintains that he should be permitted to file an appeal brief of fewer than 100 pages because Florence Hartmann was permitted to file an appeal brief of 102 pages in a comparatively less complex case.<sup>35</sup> The Appeals Chamber considers Šešelj's assertion to be without merit. Although Florence Hartmann initially filed an appeal brief of approximately 90 pages,<sup>36</sup> she was subsequently ordered to re-file on two occasions.<sup>37</sup> The final re-filed appeal brief was 27 pages in length and consisted of 8,843 words.<sup>38</sup>

20. Second, Šešelj asserts that the Decision on the Motion to Strike gives practice directions greater weight than the Statute and the Rules.<sup>39</sup> Considering that Šešelj points to no contradiction between the practice directions and the Rules or the Statute, the Appeals Chamber sees no merit in the contention that the practice directions relied upon in the Decision on the Motion to Strike were accorded greater weight than the Rules or the Statute.

21. In light of the foregoing, the Appeals Chamber finds that Šešelj has failed to demonstrate the existence of a clear error of reasoning in the Decision on the Motion to Strike or particular circumstances justifying reconsideration in order to prevent an injustice. Given that Šešelj is self-represented, the Appeals Chamber finds that it is in the interest of justice to allow him a second opportunity to re-file an appeal brief of no more than 9,000 words. Should he fail to do so, the Appeals Chamber will consider that Šešelj has waived his right of appeal. In these circumstances, the Appeals Chamber does not deem it necessary to consider the *Amicus* Prosecutor's arguments that Šešelj has abandoned his appeal by failing to re-file an appeal brief.

### **B. Šešelj's Notice of Appeal**

22. The Appeals Chamber recalls that "[t]he only formal requirement under the Rules is that the notice of appeal contains a list of the grounds of appeal; it does not need to detail the arguments that the parties intend to use in support of the grounds of appeal, the place for detailed arguments being

<sup>34</sup> Cf. *Šljivančanin* Decision, p. 2.

<sup>35</sup> Submission No. 491, para. 7.

<sup>36</sup> *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Florence Hartmann's Appellant Brief, 12 October 2009.

<sup>37</sup> *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Decision on Motions to Strike and Requests to Exceed Word Limit, 6 November 2009 ("*Hartmann* Decision on Motions to Strike and Requests to Exceed Word Limit"), para. 27; *Hartmann* Decision on Further Motions to Strike, para. 16.

<sup>38</sup> *In the Case Against Florence Hartmann*, Case No. IT-02-54-R77.5-A, Florence Hartmann's Appellant Refiled Brief Against Trial Chamber's "Judgement on Allegations of Contempt", 15 January 2010.

<sup>39</sup> Submission No. 491, para. 7.

in the Appellant's brief."<sup>40</sup> The Appeals Chamber considers that the Notice of Appeal contains sections that are clearly argumentation under each ground of appeal. On this basis alone, the Appeals Chamber finds that the Notice of Appeal does not conform to the requirements set out in Rule 108 of the Rules and paragraph 1 of the Practice Direction on Formal Requirements. The Appeals Chamber considers that the *Amicus* Prosecutor's further arguments do not relate to issues of conformity of the Notice of Appeal with the above-mentioned formal requirements. Given that their consideration would require an evaluation of Šešelj's grounds of appeal, the Appeals Chamber declines to address them at this stage of the proceedings.<sup>41</sup>

23. Šešelj is reminded that a notice of appeal requires that he clearly specify the alleged error in question and then identify the challenged finding or ruling in the judgement or decision. Detailed argumentation is to be included in the appeal brief. Šešelj is further reminded that in order to present evidence that is not included in the trial record of the Trial Judgement, he must file a motion seeking leave to do so pursuant to Rule 115 of the Rules.<sup>42</sup> In light of the foregoing, Šešelj is instructed to re-file a notice of appeal in conformity with the above requirements.

## V. DISPOSITION

24. For the foregoing reasons, the Appeals Chamber hereby **DENIES** Submission No. 491, **GRANTS** the Motion in part, and:

**STRIKES** in its entirety Šešelj's Notice of Appeal;

*Ex proprio motu*

**ORDERS** Šešelj to re-file a notice of appeal, in accordance with the terms of this decision, no later than one week from the date of receipt of the B/C/S translation of this decision;

**ORDERS** Šešelj to re-file an appeal brief of no more than 9,000 words no later than one week from the date of the re-filing of a notice of appeal;

<sup>40</sup> *Hartmann* Decision on Motions to Strike and Requests to Exceed Word Limit, para. 14, citing *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on the Prosecution's Motion to Order Veselin Šljivančanin to Seek Leave to File an Amended Notice of Appeal and to Strike New Grounds Contained in His Appeal Brief, 26 August 2008, para. 8. See also *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Decision on Prosecution's Motions for Order Striking Appellant's Notice of Appeal and Appeal Brief and Closing the Case, 16 December 2009 ("Šešelj Decision of 16 December 2009"), p. 3; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution's Motion for an Order Striking Defence Notice of Appeal and Requiring Refiling, 3 October 2006, p. 4; *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Decision (Motion to Strike Parts of Defence Appeal Brief and Evidence not on Record, Motion to Enlarge Time, Motion for Leave to File a Rejoinder to the Prosecution's Reply), 1 September 2004, para. 22.

<sup>41</sup> Cf. *Šešelj* Decision of 16 December 2009, p. 2.

<sup>42</sup> See also Practice Direction on Formal Requirements, para. 11.

**ORDERS** the *Amicus* Prosecutor to file a response brief, if any, of no more than 9,000 words, no later than ten days from the date of receipt of the English translation of Šešelj's re-filed appeal brief;

**ORDERS** Šešelj to file a brief in reply, if any, of no more than 3,000 words, no later than four days from the date of receipt of the B/C/S translation of the *Amicus* Prosecutor's response brief; and

**WARNS** Šešelj that – should he fail to file both a notice of appeal and an appeal brief in conformity with Rule 108 of the Rules, the Practice Direction on Formal Requirements, and this decision – he will be considered to have waived his right to appeal.

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

Dated this sixth day of July 2012,  
At The Hague,  
The Netherlands.



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Judge Arlette Ramaroson  
Presiding