

INTERNATIONAL CRIMINAL TRIBUNAL
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IT-03-67-R77.3

D28 - D27

02 MARCH 2010

Case No. IT-03-67-R77.3
Prosecutor v. Vojislav Šešelj

**PUBLIC
DECISION****THE REGISTRAR,**

NOTING the Statute of the International Tribunal as adopted by the Security Council under Resolution 827 (1993), and in particular Article 21 thereof;

NOTING the Rules of Procedure and Evidence as adopted by the International Tribunal on 11 February 1994, as subsequently amended (“Rules”), and in particular Rules 74 and 77 thereof;

NOTING the Practice Direction on Procedure for the Investigation and Prosecution of Contempt before the International Tribunal, issued on 6 May 2004 (IT/227) (“Practice Direction”);

CONSIDERING that on 4 February 2010, Trial Chamber II issued the public version of the “Second Decision on Prosecution’s Motion Under Rule 77 Concerning Further Breaches of Protective Measures (Three Books) Issued on 3 February 2010” (“Decision”), initiating contempt proceedings against Vojislav Šešelj for allegedly knowingly and wilfully disclosing information in knowing violation of an order of a Chamber;

CONSIDERING that in an annex to the Decision, the Trial Chamber issued an order in lieu of an indictment against Vojislav Šešelj on one count of contempt of the International Tribunal, punishable under Rule 77(A)(ii) of the Rules, for allegedly knowingly and wilfully disclosing information in knowing violation of an order of a Chamber;

CONSIDERING that the Trial Chamber directed the Registrar to appoint an *amicus curiae* prosecutor to prosecute the charge set out in the order in lieu of an indictment;¹

CONSIDERING that in accordance with Rule 77(E) of the Rules, Parts 4-8 of the Rules shall apply *mutatis mutandis* to contempt proceedings;

CONSIDERING that although neither Rule 74 of the Rules, the Practice Direction, nor the Information Concerning the Submission of *Amicus Curiae* Briefs (IT/122) stipulate the qualifications that an *amicus curiae* should possess, it is, nonetheless, in the interests of justice to ensure that the *amicus curiae* is a qualified professional who is familiar with the legal and procedural requirements of prosecuting such a case before the International Tribunal, and has relevant investigative or prosecutorial experience;

¹ Decision, para. 20(c).
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CONSIDERING further that it would be consistent with the function and responsibilities of an *amicus curiae* that he/she be bound by the Statute, the Rules, and any other relevant rules, regulations, and orders of the International Tribunal;

CONSIDERING that Mr. Bruce MacFarlane, Q.C. is a qualified attorney, appointed Queen's Counsel by the Government of Canada and possesses extensive experience in criminal law and procedure, including investigative and prosecutorial experience in contempt proceedings before the International Tribunal;

CONSIDERING that Mr. MacFarlane has agreed to be appointed as *amicus curiae* prosecutor in this case, and has declared his availability to act in this capacity;

CONSIDERING that the Registrar consulted the Trial Chamber as to the suitability of Mr. MacFarlane for an appointment as *amicus curiae* prosecutor in accordance with paragraph 9 of the Practice Direction, and the Trial Chamber approved the proposal;

HEREBY DECIDES to appoint Mr. Bruce MacFarlane, Q.C. as *amicus curiae* to prosecute the alleged knowing and wilful disclosure of information in knowing violation of an order of a Chamber by Vojislav Šešelj;

ORDERS that in the performance of these functions, Mr. MacFarlane shall be bound by the Statute, the Rules and any other applicable rules and regulations and orders, including the Code of Professional Conduct for Counsel Appearing Before the International Tribunal.



Ken Roberts
Deputy Registrar

Dated this 2nd day of March 2010
At The Hague,
The Netherlands.