



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-A

Date: 10 January 2013

Original: English

THE PRESIDENT OF THE TRIBUNAL

Before: Judge Theodor Meron, President

Registrar: Mr. John Hocking

Decision of: 10 January 2013

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON VOJISLAV ŠEŠELJ'S
MOTION TO DISQUALIFY JUDGES ARLETTE
RAMAROSON, MEHMET GÜNEY, AND ANDRÉSIA VAZ**

The Accused:

Mr. Vojislav Šešelj

1. **I, Theodor Meron**, President 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”), am seised of “Professor Vojislav Šešelj’s Request for Disqualification of Judges Arlette Ramaroson, Mehmet Güney and Andréia Vaz”, filed by Vojislav Šešelj (“Šešelj”) on 15 October 2012 (“Motion”).¹

A. Background

2. On 31 October 2011, Šešelj was convicted in Case No. IT-03-67-R77.3 of one count of contempt of the Tribunal and sentenced to a single term of 18 months’ imprisonment.²

3. On 14 November 2011, the *Amicus* Prosecutor appealed against the sentence imposed in the Trial Judgement of 31 October 2011.³ On 21 November 2011, Šešelj filed a request before the Appeals Chamber of the Tribunal (“Appeals Chamber”) seeking a stay of the deadlines in the appeal proceedings.⁴ On 11 January 2012, the Pre-Appeal Judge issued the Consolidated Briefing Schedule, which, *inter alia*, 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.⁵ 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.⁶

4. Šešelj filed his notice of appeal on 8 February 2012⁷ and his appeal brief, of 33,606 words, on 8 March 2012.⁸ 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 proceedings until a decision

¹ The Registry of the Tribunal (“Registry”) received the B/C/S original on 27 September 2012.

² *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 of 31 October 2011”), para. 82.

³ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, *Amicus Curiae* Prosecutor Notice of Appeal Against Sentence, 14 November 2011. *See also* *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, *Amicus Curiae* Prosecutor’s Appellant Brief on Sentence, 29 November 2011.

⁴ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Submission no. 482, 21 November 2011. The Registry received the B/C/S original on 17 November 2011.

⁵ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, 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). Šešelj received the B/C/S translation of the Consolidated Briefing Schedule on 20 January 2012. *See* *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, *Procès-Verbal*, 23 January 2012.

⁶ Consolidated Briefing Schedule, para. 7(d).

⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Notice of Appeal Against Judgment on Allegations of Contempt of Court of 31 October 2011, 8 February 2012 (confidential). The Registry received the B/C/S original on 2 February 2012.

⁸ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Appeal of the Judgement for Contempt of Court of 31 October 2011, 8 March 2012 (confidential). The Registry received the B/C/S original on 16 February 2012.

could be rendered on this issue.⁹ The Pre-Appeal Judge ordered a stay of deadlines for the filing of the *Amicus* Prosecutor's response brief and Šešelj's brief in reply.¹⁰

5. On 23 April 2012, the Appeals Chamber noted that Šešelj's appeal brief was well in excess of the word limit provided for in the Consolidated Briefing Schedule and the relevant practice directions, and found that he had failed to demonstrate the existence of exceptional circumstances that would satisfy exceeding the word limit.¹¹ As a consequence, the Appeals Chamber struck Šešelj's appeal brief and ordered him to re-file an appeal brief of no more than 9,000 words.¹² Šešelj failed to do so within the prescribed time-limit.¹³

6. On 21 May 2012, the *Amicus* Prosecutor moved to strike Šešelj's notice of appeal and close the case.¹⁴ On 6 July 2012, the Appeals Chamber struck Šešelj's notice of appeal and, *inter alia*, ordered him to re-file a notice of appeal in accordance with specified requirements.¹⁵ The Appeals Chamber further ordered Šešelj to re-file his appeal brief in accordance with the terms of the Decision of 6 July 2012.¹⁶ On 19 July 2012, Šešelj filed a submission in which he stated that he "fully reject[ed]" the Decision of 6 July 2012 but made no request for relief.¹⁷

7. On 30 July 2012, the *Amicus* Prosecutor requested that the Appeals Chamber issue a decision declaring that Šešelj had waived his right of appeal because he had failed to re-file a notice of appeal and an appeal brief.¹⁸ Šešelj did not respond to this request. On 23 August 2012, the Appeals Chamber found that Šešelj had waived his right to appeal and declared the briefing in Case No. IT-03-67-R77.3-A completed.¹⁹

⁹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, *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.

¹⁰ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Order Staying Deadlines for Respondent's Brief and Appellant's Brief in Reply, 15 March 2012, para. 4.

¹¹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Decision on *Amicus Curiae* Prosecutor's Motion to Strike the Appellant's Brief and Urgent Motion for Stay of Deadline, 23 April 2012 ("Decision of 23 April 2012"), paras 10, 13.

¹² Decision of 23 April 2012, para. 15.

¹³ See *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, 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, 6 July 2012 ("Decision of 6 July 2012"), para. 7. See also Decision of 23 April 2012, para. 15.

¹⁴ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, *Amicus* Prosecutor's Motion for Order Striking Notice of Appeal and Closing the Case, 21 May 2012, paras 1, 27.

¹⁵ Decision of 6 July 2012, para. 24.

¹⁶ Decision of 6 July 2012, para. 24.

¹⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Response to the Decision on Vojislav Šešelj's Submission No. 491 and on the *Amicus* Prosecutor's Motion to Strike Notice of Appeal and to Close the Case, 19 July 2012, para. 5. The Registry received the B/C/S original on 17 July 2012.

¹⁸ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, *Amicus Curiae* Prosecutor's Motion for a Declaration that the Respondent has Waived his Right to Appeal, 30 July 2012, paras 13, 17.

¹⁹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Decision on *Amicus Curiae* Prosecutor's Motion for a Declaration that Vojislav Šešelj has Waived his Right to Appeal, 23 August 2012 ("Decision of 23 August 2012"), p. 2.

8. On 28 June 2012, in Case No. IT-03-67-R77.4, Trial Chamber II of the Tribunal found Šešelj guilty of one count of contempt of the Tribunal and sentenced him, Judge Trechsel dissenting, to a single term of imprisonment of two years.²⁰

9. Šešelj filed his notice of appeal against the Trial Judgement of 28 June 2012 on 25 July 2012²¹ and his appeal brief on 14 August 2012.²² Judges Ramaroson, Güney, and Vaz, who were members of the Appeals Bench in Case No. IT-03-67-R77.3-A, are also members of the Appeals Bench in the present appellate proceedings.²³

B. Applicable law

10. Rule 15(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) provides that:

A Judge may not sit on a trial or appeal in any case in which the Judge has a personal interest or concerning which the Judge has or has had any association which might affect his or her impartiality. The Judge shall in any such circumstance withdraw, and the President shall assign another Judge to the case.

The Appeals Chamber has held that:

A. A Judge is not impartial if it is shown that actual bias exists.

B. There is an unacceptable appearance of bias if:

i) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge’s decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge’s disqualification from the case is automatic; or

ii) the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.²⁴

With respect to the reasonable observer prong of this test, the Appeals Chamber has held that the “reasonable person must be an informed person, with knowledge of all the relevant circumstances,

²⁰ *In the Matter of Vojislav Šešelj*, Case No. IT-03-67-R77.4, Public Redacted Version of Judgement Issued on 28 June 2012 (“Trial Judgement of 28 June 2012”), para. 58.

²¹ Notice of Appeal Against the Judgement on Allegations of Contempt of Court of 28 June 2012, 25 July 2012. The Registry received the B/C/S original on 18 July 2012.

²² Appeal Against the Judgement on Allegations of Contempt of Court of 28 June 2012, 14 August 2012. The Registry received the B/C/S original on 2 August 2012.

²³ *Compare Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3-A, Order Assigning Judges to a Case Before the Appeals Chamber, 15 November 2011, p. 2, with Order Assigning Judges to a Case Before the Appeals Chamber, 14 August 2012, p. 1.

²⁴ *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-A, Judgement, 21 July 2000 (“*Furundžija* Appeal Judgement”), para. 189. See also *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Decision on Motion for Disqualification, 12 January 2009 (“*Lukić* Decision”), para. 2; *Prosecutor v. Vidoje Blagojević*, Case No. IT-02-60-R, Decision on Motion for Disqualification, 2 July 2008 (“*Blagojević* Decision”), para. 2; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Motion for Disqualification, 16 February 2007 (“*Šešelj* Decision”), para. 4.

including the traditions of judicial integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties that Judges swear to uphold.”²⁵

11. The Appeals Chamber has also emphasised that there is a presumption of impartiality that attaches to a Judge.²⁶ Accordingly, the party who seeks the disqualification of a Judge bears the burden of adducing sufficient evidence that the Judge is not impartial, and there is a high threshold to rebut the presumption of impartiality.²⁷ The party must demonstrate “a reasonable apprehension of bias by reason of prejudgement” that is “firmly established”.²⁸ The Appeals Chamber has explained that this high threshold is required because “just as any real appearance of bias of the part of a judge undermines confidence in the administration of justice, it would be as much of a potential threat to the interests of the impartial and fair administration of justice if judges were to disqualify themselves on the basis of unfounded and unsupported allegations of apparent bias.”²⁹

12. Furthermore, Rule 15(B) of the Rules provides that:

(i) Any party may apply to the Presiding Judge of a Chamber for the disqualification and withdrawal of a Judge of that Chamber from a trial or appeal upon the above grounds. The Presiding Judge shall confer with the Judge in question and report to the President.

(ii) Following the report of the Presiding Judge, the President shall, if necessary, appoint a panel of three Judges drawn from other Chambers to report to him its decision on the merits of the application. If the decision is to uphold the application, the President shall assign another Judge to sit in the place of the Judge in question.

(iii) The decision of the panel of three Judges shall not be subject to interlocutory appeal.

(iv) If the Judge in question is the President, the responsibility of the President in accordance with this paragraph shall be assumed by the Vice-President or, if he or she is not able to act in the application, by the permanent Judge most senior in precedence who is able to act.

C. Submissions

13. The basis of Šešelj’s Motion for the disqualification of Judges Ramaroson, Güney, and Vaz is their involvement in rendering the Decision of 23 August 2012,³⁰ in which the Appeals Chamber found that Šešelj had waived his right to appeal the Trial Judgement of 31 October 2011.³¹ Šešelj

²⁵ *Lukić* Decision, para. 2. See also *Blagojević* Decision, para. 2; *Šešelj* Decision, para. 5; *Furundžija* Appeal Judgement, para. 190.

²⁶ *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3; *Šešelj* Decision, para. 5; *Furundžija* Appeal Judgement, para. 196.

²⁷ *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3; *Šešelj* Decision, para. 5; *Furundžija* Appeal Judgement, para. 197.

²⁸ *Furundžija* Appeal Judgement, para. 197. See also *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Judgement, 20 February 2001 (“*Čelebići* Appeal Judgement”), para. 707.

²⁹ *Čelebići* Appeal Judgement, para. 707. See also *Lukić* Decision, para. 3; *Blagojević* Decision, para. 3.

³⁰ See Motion, paras 1, 3-8, 11-13, 15-16, 19-20, 26-28, 30-36, 38-39, p. 20.

³¹ Decision of 23 August 2012, p. 2.

argues that, in issuing the Decision of 23 August 2012, Judges Ramaroson, Güney, and Vaz “rendered an unbelievable (exceptional) quasi-legal decision without precedent in modern judicial practice [and] denied [his] right to appeal in case no. IT-03-67-R77.3.”³² He submits that

[t]his unprecedented, scandalous and draconian Decision of 23 August 2012 clearly abolishes [his] right to an appeal (and appeal proceedings in general) despite the fact that this right is guaranteed to him not only by the [Tribunal] Statute and the [Tribunal] Rules of Procedure and Evidence, but also by numerous international conventions and well-known judgements and views of the European Court of Human Rights and the United Nations Human Rights Committee.³³

14. As a result, Šešelj argues that Judges Ramaroson, Güney, and Vaz “are not persons who can be said to be objective and impartial with regard to” him, as they have shown “that they are biased and harbour a kind of zealotry and a flagrant lack of objectivity towards” him.³⁴ According to Šešelj, Judges Ramaroson, Güney, and Vaz will not guarantee his fair trial rights pursuant to Article 21 of the Statute in the present case.³⁵

15. In addition, Šešelj requests that I consider the oversized Motion in its entirety on the ground that “exceptional circumstances” necessitate an extension of the word limit provided for in the relevant Practice Direction.³⁶ In support of this request Šešelj submits that he “is being confronted with exceptional circumstances (abuse and pressure)” in the different contempt proceedings against him³⁷ and that the nature of his allegations against Judges Ramaroson, Güney, and Vaz likewise constitutes an exceptional circumstance.³⁸

D. Discussion

16. On 17, 18, and 30 October 2012, and pursuant to Rule 15(B)(i) of the Rules, I consulted with Judges Ramaroson, Vaz, and Güney, respectively, regarding the Motion. All three Judges considered that there was no merit in the request for disqualification.

³² Motion, para. 3. *See also* Motion, paras 11-13, p. 20.

³³ Motion, para. 3. In support of his claim, Šešelj refers, *inter alia*, to Article 13 of the Statute of the Tribunal (“Statute”) (Motion, para. 14 (mistakenly referring to Rule 12 of the Rules)), Article 21 of the Statute (Motion, para. 15), Article 25 of the Statute (Motion, para. 20), Rule 15 of the Rules (Motion, para. 16), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”) (Motion, paras 26-28), Article 13 of the European Convention (Motion, paras 21-26, 28), Article 2 of Protocol No. 7 to the European Convention (Motion, para. 29), Articles 2(3)(a) and 14 of the International Covenant on Civil and Political Rights (Motion, para. 30), Article 47 of the Charter of Fundamental Rights of the European Union (Motion, paras 32-33), Article 81 of the Rome Statute of the International Criminal Court (Motion, paras 35-36), Article 36 of the Constitution of the Republic of Serbia (Motion, para. 37), and the United Nations Committee on Human Rights views of 6 November 1997 in *Polay Campos v. Peru* (Motion, para. 31).

³⁴ Motion, para. 4.

³⁵ Motion, para. 15.

³⁶ Motion, paras 1-4, *referring to* Practice Direction on the Length of Briefs and Motions, IT/184 Rev. 2, 16 September 2005 (“Practice Direction”), para. (C)7.

³⁷ Motion, para. 1.

³⁸ Motion, paras 3-4.

17. Turning first to Šešelj's request for leave to file a submission that exceeds the word limit set forth in the Practice Direction, I note that the Motion contains 10,018 words, which is more than 7,000 words beyond the applicable word limit.³⁹ I recall that "the quality and effectiveness of [a submission] does not depend on length but on the clarity and cogency of the presented arguments".⁴⁰ Having carefully reviewed the Motion, I consider that it contains unnecessary repetition⁴¹ and that the claimed exceptional circumstances do not "necessitate [an] oversized filing."⁴² For these reasons, Šešelj has not demonstrated that a variation of the word limit is warranted.⁴³ Nonetheless, I consider that it is in the interests of the facilitation of expeditious proceedings to allow the Motion to exceed the word limit.⁴⁴ Accordingly, I will consider the Motion in its entirety.

18. As regards Šešelj's request for the disqualification of Judges Ramaroson, Güney, and Vaz, I note at the outset that in the Decision of 23 August 2012, these Judges were concerned exclusively with determining whether Šešelj had waived his right to appeal the Trial Judgement of 31 October 2011 and ultimately declared the briefing in Case No. IT-03-67-R77.3-A completed.⁴⁵ They did not make any finding in relation to the appellate proceedings in the present case, Case No. IT-03-67-R77.4-A.

19. I further note that in the Decision of 23 August 2012, the Appeals Chamber explained that Šešelj had already been ordered twice to re-file an appeal brief, as his original appeal brief was well in excess of the appropriate word limit, but had failed to do so.⁴⁶ The Appeals Chamber also recalled that in the Decision of 6 July 2012, it had expressly warned Šešelj that, should he fail to re-file a notice of appeal and an appeal brief as ordered, he would be considered to have waived his right to appeal.⁴⁷

³⁹ Compare Practice Direction, para. (C)5 (word limit of 3,000 words for "[o]ther motions") with Motion, p. 20 (word count of 10,018 words).

⁴⁰ *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Defence Motion for Extension of Word Limit for Defence Appellant's Brief, 6 October 2006, p. 3. See also *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"), para. 24.

⁴¹ Cf. *Hartmann* Decision, para. 24.

⁴² Practice Direction, para. (C)7. See also Motion, paras 1, 3-4.

⁴³ Having reached this conclusion, I do not find it necessary to address the timeliness of Šešelj's request. See generally Practice Direction, para. (C)7 (a "party must seek authorization in advance from the Chamber to exceed the word limits in this Practice Direction").

⁴⁴ See *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, Decision on Urgent Requests to Extend Word Limits, 18 July 2008, p. 2. See also *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Decision on Application and Proposed *Amicus Curiae* Brief, 14 February 2012, para. 4.

⁴⁵ See Decision of 23 August 2012, pp. 1-2.

⁴⁶ Decision of 23 August 2012, pp. 1-2.

⁴⁷ Decision of 23 August 2012, p. 1, referring to Decision of 6 July 2012, para. 24.

20. It is in light of the above that I have considered Šešelj's allegations against Judges Ramarosan, Güney, and Vaz, and am of the view that he has failed to put forth credible information to substantiate his claim that these Judges have either a personal interest in the current case or any association that affects their impartiality. He has also not submitted information demonstrating actual bias or the appearance of bias on the part of Judges Ramarosan, Güney, or Vaz. In this respect, I recall that simply stating that a Judge is biased because he or she ruled in a particular way is an insufficient basis for disqualification.⁴⁸ The strong presumption of impartiality has therefore not been rebutted.

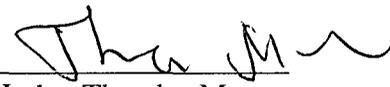
21. Rule 15(B)(ii) of the Rules provides that, if necessary, a panel of three Judges shall be appointed to report on the merits of an application for disqualification. I find that Šešelj has failed to substantiate any of his claims. For the reasons set out above, the Motion is patently unmeritorious, and there is therefore no need to appoint a panel of three Judges to consider the Motion.

E. Disposition

22. For the foregoing reasons and pursuant to Rule 15 of the Rules, I hereby **DENY** the Motion.

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

Dated this 10th day of January 2013
At The Hague,
The Netherlands.



Judge Theodor Meron
President

[Seal of the Tribunal]

⁴⁸ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.3, Decision on Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker, 19 November 2010, para. 28. *See also Prosecutor v. Radoslav Brđanin and Momir Talić*, Case No. IT-99-36-PT, Decision on Application by Momir Talić for the Disqualification and Withdrawal of a Judge, 18 May 2000, para. 18.