

UNITED
NATIONS



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: 28 June 2012
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. John Hocking

Judgement of: 28 June 2012

IN THE MATTER OF VOJISLAV ŠEŠELJ

PUBLIC

**PUBLIC REDACTED VERSION
OF JUDGEMENT ISSUED ON 28 JUNE 2012**

The Accused

Vojislav Šešelj

A handwritten signature in black ink, appearing to be 'S' followed by a flourish.

I. ACCUSED	3
II. OPERATIVE INDICTMENT AND PROCEDURAL HISTORY	3
A. FIRST DECISION	5
1. Matters arising from Case No. IT-03-67-R77.2	5
2. Matters arising from Case No. IT-03-67-R77.3	6
3. Matters arising from Case No. IT-02-54-Misc.4	8
4. Proceedings in Case No. IT-03-67-R77.4 regarding the First Decision	9
B. SECOND DECISION	9
C. THIRD DECISION	11
III. OTHER PRE-TRIAL MATTERS	12
A. THE ACCUSED'S REQUESTS AT THE STATUS CONFERENCE ON 19 MARCH 2012	12
B. PRE-TRIAL CONFERENCE	14
IV. TRIAL PROCEEDINGS	15
V. SUBMISSIONS OF THE ACCUSED	16
VI. LAW	16
VII. DISCUSSION AND FINDINGS	18
A. INTRODUCTION	18
B. <i>ACTUS REUS</i>	18
C. <i>MENS REA</i>	19
D. CONCLUSION	19
VIII. SENTENCING	19
A. SUBMISSIONS	19
B. LAW	19
C. CONCLUSIONS	20
IX. DISPOSITION	22
PARTLY DISSENTING OPINION OF JUDGE TRECHSEL	23

I. ACCUSED

1. Vojislav Šešelj (“Accused”) was born on 11 October 1954 in Sarajevo, Republic of Bosnia and Herzegovina. He is currently being tried before Trial Chamber III in the case of *Prosecutor v. Vojislav Šešelj* (Case No. IT-03-67-T) on 14 counts of crimes against humanity and violations of the laws or customs of war (“main Šešelj trial”).¹

II. OPERATIVE INDICTMENT AND PROCEDURAL HISTORY

2. The Accused is charged with contempt of the Tribunal, punishable under the Tribunal’s inherent power and Rules 77(A) and (A)(ii) of the Rules of Procedure and Evidence (“Rules”), for knowingly and wilfully interfering with the administration of justice by failing to comply with Chambers orders and decisions to remove from his website, vseselj.com (“website”), material revealing confidential information about a number of protected witnesses. With respect to the indictment in this case, three decisions of are of particular importance.

3. On 9 May 2011, this Trial Chamber issued a decision on parts of a Prosecution motion, which the Appeals Chamber had referred to it, and more generally on the “issue of removal of confidential information” from the website (“First Decision”).² The Trial Chamber held that there were sufficient grounds to proceed against the Accused pursuant to Rule 77(D)(ii) of the Rules for having failed to comply with Chambers orders to secure withdrawal of certain confidential material from the website. Having decided to prosecute the matter itself, the Trial Chamber issued an order in lieu of indictment charging the Accused with one count of contempt of the Tribunal, punishable under Rule 77(A) and (A)(ii) of the Rules (“Indictment”).³

4. On 21 October 2011, the Trial Chamber amended the Indictment to include the Accused’s failure to comply with its order of 15 July 2011 to remove from the website a book he had authored (respectively, “Second Decision” and “15 July 2011 Order”).⁴ On 29 March 2012, the Trial Chamber amended the Indictment a second and final time charging the Accused with contempt of the Tribunal for his failure to comply with a decision of 3 November 2011 to remove a confidential

¹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Third amended indictment, 7 Dec 2007, p. 1.

² Decision on failure to remove confidential information from public website and order in lieu of indictment, confidential, 9 May 2011, para. 1. See further *infra* section II.A. See also Corrigendum, issued confidentially on 10 May 2011, and Public edited version of “Decision on failure to remove confidential information from public website and order in lieu of indictment” issued on 9 May 2011, public, 24 May 2011.

³ First Decision, paras 28, 29(1)(c). The order in lieu of indictment was attached as annex to the decision.

⁴ Second decision on failure to remove confidential information from public website and amended order in lieu of indictment, with annex, confidential, 21 Oct 2011, p. 3-4. See further *infra* section II.B. See also 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.

submission published on the website (respectively, “Third Decision” and “3 November 2011 Decision”).⁵

5. The orders and decisions which the Accused is charged with having breached are the following (“Orders and Decisions”):

- 1) On 16 December 2009, the Appeals Chamber ordered the Accused to remove a book entitled “[REDACTED]” and his notice of appeal and appeal brief in Case No. IT-03-67-R77.2-A (respectively, “First Book”, “Notice of Appeal”, “Appeal Brief” and “16 December 2009 Decision”),⁶
- 2) On 31 January 2011, Trial Chamber II ordered the Accused to remove a book entitled “[REDACTED]” (respectively, “Second Book” and “First 31 January 2011 Order”),⁷
- 3) On 31 January 2011, Trial Chamber II ordered the Accused to remove confidential submissions 458 and 459 (“Second 31 January 2011 Order”),⁸
- 4) On 17 February 2011, Trial Chamber II ordered the Accused to remove confidential submission 466 and a book entitled “[REDACTED]”, which included confidential submission 463 (respectively, “Third Book” and “17 February 2011 Order”),⁹

⁵ Third decision on failure to remove confidential information from public website and amended order in lieu of indictment, with annex containing the order in lieu of indictment, confidential, 29 March 2012. See further *infra* section II.C. See also 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, public, 5 Apr 2012.

⁶ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Decision on urgent motions to remove or redact documents pertaining to protected witnesses, confidential, 16 Dec 2009. The Accused submitted the Notice of Appeal and the Appeal Brief as public documents on 18 August 2009 and 6 October 2009, respectively. Both filings were filed confidentially on 25 August 2009 and 28 October 2009, respectively, following instructions of the President’s Office and the Appeals Chamber, see Procès-verbal of reception of “Submission No. 422”, confidential, 26 Aug 2009, and Procès-verbal of reception of “Appellant’s brief against the judgement on allegations of contempt of 24 July 2009”, confidential, 17 Nov 2009. See further *infra* section II.A.1.

⁷ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Order to remove book from website, confidential, 31 Jan 2011. See further *infra* section II.A.2.

⁸ *Prosecutor v. Šešelj*, Case No. IT-02-54-Misc.4, Order to remove documents from website, confidential, 31 Jan 2011. See further *infra* section II.A.3. Submission 458 is the “Motion by Professor Vojislav Šešelj seeking that the President of the International Criminal Tribunal for the Former Yugoslavia initiate proceedings for contempt of court against the Prosecutor’s Office of the Tribunal in the Hague”, confidential, 2 Sep 2010. Submission 459 is “Notice by Professor Vojislav Šešelj to Trial Chamber III of unlawful conduct of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, confidential, 2 Sep 2010. The Accused submitted Submission 458 and Submission 459 as public filings on 25 August 2010. Following instructions of the President’s Office and of Trial Chamber III, the submissions were filed confidentially on 2 September 2010. The Accused confirmed reception of these confidential filings, see Procès-verbal of reception of “Submission No. 458” and Procès-verbal of reception of “Submission No. 459”, both filed confidentially on 6 Sep 2010.

⁹ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Order to remove confidential information from website, confidential 17 Feb 2011. Submission 463 is “Professor Vojislav Šešelj’s Rule 65ter motion”, confidential 14 Jan 2011. The Accused submitted Submission 463 as a public filing on 23 December 2010. It was filed confidentially pursuant to Trial Chamber instruction on 14 January 2011. The Accused confirmed reception of this confidential submission, see Procès-verbal of reception of “Submission No. 463”, confidential, 20 Jan 2011. Submission 466 is the “List of witnesses

- 5) On 15 July 2011, Trial Chamber II ordered the Accused to remove a book entitled “[REDACTED]” (respectively, “Fourth Book” and “15 July 2011 Order”),¹⁰ and
- 6) On 3 November 2011, Trial Chamber II ordered the Accused to remove confidential submission 478 (“3 November 2011 Decision”).¹¹

The First Decision concerned items 1-4, the Second Decision concerned item 5 and the Third Decision concerned item 6. The procedural background of the above decisions and orders will be described in the following.

A. First Decision

1. Matters arising from Case No. IT-03-67-R77.2

6. On 24 July 2009, Trial Chamber II found the Accused guilty of contempt of the Tribunal and sentenced him to fifteen months imprisonment for having disclosed confidential information pertaining to protected witnesses [REDACTED] in the First Book which was published on the website.¹² In its judgement, the Trial Chamber also ordered the Accused to remove the First Book from the website and to file a report with the Registrar on the actions taken to this effect by 7 August 2009. On 5 August 2009, the Accused acknowledged receipt of the judgement.¹³ On 10 August 2009, the Registry notified the Trial Chamber that it had not received any report from the Accused and that the First Book remained available on the website.¹⁴

7. On 18 August 2009, the Accused filed the Notice of Appeal, followed by the Appeal Brief on 6 October 2009.¹⁵ By the 16 December 2009 Decision,¹⁵ the Appeals Chamber affirmed the Trial

Professor Vojislav Šešelj intends to call to testify about his good character pursuant to Rules 65ter(G(i), 92bis(A)(i)(e) and 92bis(A)(ii)(a) and (c) of the ICTY Rules of Procedure and Evidence, confidential, 8 Feb 2011. The Accused submitted Submission 466 as a public filing on 28 January 2011. It was filed confidentially pursuant to Trial Chamber instruction on 8 February 2011. The Accused confirmed reception of this confidential submission, see Procès-verbal of reception of “Submission No. 466”, confidential, 11 Feb 2011. See further *infra* section II.A.2.

¹⁰ *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Order to remove book from website, confidential, 15 Jul 2011. See *infra* section II.B.

¹¹ *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.3, Decision on Prosecution’s urgent motion for an order to remove submission 478 from website, confidential, 3 Nov 2011. Submission 478 is “Professor Vojislav Šešelj’s motion to instigate criminal proceedings against Prosecution witnesses for giving false testimony in Case No. IT-03-67”, confidential, 25 Oct 2011. The Accused submitted Submission 478 as a public filing on 21 September 2011. It was filed confidentially on Trial Chamber III’s instruction on 25 October 2011. The Accused confirmed reception of this confidential submission, see Procès-verbal of reception of “Submission No. 478”, confidential, 27 Oct 2011. See *infra* section II.C.

¹² *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2, Judgement, confidential, 24 Jul 2009, para. 59. The protective measures granted to the witnesses are described in paras 20-23.

¹³ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2, Procès-verbal of reception of BCS translation of “Judgement on allegations of contempt”, confidential, 5 Aug 2009.

¹⁴ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2, Registry submission regarding judgement on allegations of contempt, confidential, 10 Aug 2009

¹⁵ *Supra* fn 6.

Chamber's order to the Accused to remove the First Book from the website and also ordered him to withdraw the Notice of Appeal and Appeal Brief within three days of the 16 December 2009 Decision having been served upon him.¹⁶ By another decision issued on 16 December 2009, the Appeals Chamber declared the Notice of Appeal and the Appeal Brief to be flawed and ordered him to re-file.¹⁷ On 6 January 2010, the Accused acknowledged receipt of the 16 December 2009 Decision.¹⁸ On 8 January 2010, the Accused filed a combined notice of appeal and appeal brief.¹⁹ On 19 May 2010, the Appeals Chamber affirmed the conviction and sentence imposed by Trial Chamber II and ordered the Accused to implement immediately the 16 December 2009 Decision's order to remove the First Book, the Notice of Appeal and the Appeal Brief from the website.²⁰

8. On 3 August 2010, the Prosecution filed a confidential and *ex parte* motion before the Appeals Chamber requesting, *inter alia*, an order in lieu of indictment against the Accused for his continued breach of the 16 December 2009 Decision by publishing on the website of the First Book, the Notice of Appeal and the Appeal Brief.²¹ On 15 October 2010, the Appeals Chamber referred these parts of the Prosecution's motion to Trial Chamber II, noting that if additional contempt prosecutions were to be initiated, the Trial Chamber would have the option of prosecuting the matter itself.²²

2. Matters arising from Case No. IT-03-67-R77.3

9. On 26 January 2009, the Prosecution filed a confidential and *ex parte* motion under Rule 77, submitting that the Accused had knowingly violated orders of Trial Chamber III issued in the main *Šešelj* trial by disclosing confidential information relating to thirteen protected witnesses in the Second Book.²³ On 21 August 2009, the Trial Chamber issued a confidential and *ex parte* decision

¹⁶ 16 December 2009 Decision, p. 6. See also the Prosecution's "Urgent motion to remove protected witness information from the internet", public with public and confidential annexes, 6 Oct 2009, and the "Amicus Prosecutor's urgent motion for order to remove or redact documents on website", confidential, 13 Nov 2009.

¹⁷ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Decision on Prosecutor's motion for order striking appellant's notice of appeal and appeal brief and closing the case, public, 16 Dec 2009, p. 3-5. See also *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2, Prosecutor's motion for order striking notice of appeal and closing the case, confidential, 5 Oct 2009; *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2, Prosecutor motion for order striking appellant's brief and closing the case, confidential, 30 Oct 2009.

¹⁸ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Procès-verbal of reception of BCS translation of "Decision on urgent motions to remove or redact documents pertaining to protected witnesses", confidential, 6 Jan 2010.

¹⁹ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Notice of appeal and appellant's brief against the judgment on allegations of contempt pursuant to the decision on the Prosecution's motion for order striking appellant's notice of appeal and appeal brief and closing the case issued by the Appeals Chamber on 16 December 2009, confidential, 8 Jan 2010.

²⁰ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Judgement, 19 May 2010 ("*Šešelj* Appeal Judgement"), para. 42.

²¹ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Urgent motion under Rule 77 concerning violation of orders of the Appeals Chamber, confidential and *ex parte*, 3 Aug 2010.

²² *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.2-A, Decision on Prosecution's "Urgent motion under Rule 77 concerning violation of orders of the Appeals Chamber", confidential and *ex parte*, 15 Oct 2010, p. 3.

²³ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Prosecution's motion under Rule 77 concerning further breaches of protective measures, confidential and *ex parte*, 26 Jan 2009.

denying the Prosecution's motion.²⁴ Following a Prosecution appeal which limited the matter to eleven of the thirteen witnesses, on 17 December 2009 the Appeals Chamber held that the evidence before the Trial Chamber gave rise to a *prima facie* case that the Accused had knowingly disclosed identifying information pertaining to these witnesses in breach of the Chambers orders.²⁵

10. On 26 April 2010, the *Amicus Curiae* Prosecutor in Case No. IT-03-67-R77.3 requested Trial Chamber II to order the Accused to remove the Second Book from the website, noting the Appeals Chamber's finding that there existed a *prima facie* case against the Accused in respect of this book.²⁶ On 16 December 2010, Trial Chamber II ordered the Accused to remove the Second Book from the website, or to file a report explaining the reasons for not doing so, within 14 days.²⁷ On 10 January 2011, the Accused indicated that he did not intend to remove the Second Book.²⁸

11. By the First 31 January 2011 Order, Trial Chamber II again ordered the Accused to remove the Second Book no later than 14 February 2011 and ordered the Registry to report on the implementation of this order by 21 February 2011.²⁹ On 8 February 2011, the Accused acknowledged receipt of the First 31 January 2011 Order.³⁰ On 21 February 2011, the Registry informed the Trial Chamber, *inter alia*, that the Second Book remained publicly available on the website.³¹

12. On 11 February 2011, the *Amicus Curiae* Prosecutor in Case No. IT-03-67-R77.3 requested Trial Chamber II to issue an order to the Accused to remove from the website submission 466 and the Third Book, which also contains submission 463.³² By the 17 February 2011 Order, Trial Chamber II ordered the Accused to remove this material by 3 March 2011 and ordered the Registry to report on the implementation of this order by 10 March 2011.³³ On 28 February 2011, the

²⁴ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Decision on Prosecution's motion under Rule 77 concerning further breaches of protective measures (Three Books), confidential and *ex parte*, 21 Aug 2009.

²⁵ *Prosecutor v. Šešelj*, Case No. IT-03-67-AR77.4, Decision on Prosecution's appeal against the Trial Chamber's decision of 21 August 2009, confidential and *ex parte*, 17 Dec 2009, paras 21, 26. See also *Prosecutor v. Šešelj*, Case No. IT-03-67-AR77.4, Prosecution's notice of appeal, confidential and *ex parte*, 7 Sep 2009.

²⁶ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Prosecutor's motion to remove document from website, 26 Apr 2010, para. 5, referring to para. 27 of the Appeals Chamber's 17 December 2009 decision, *supra* fn. 25.

²⁷ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Decision on Prosecutor's motion for order to remove document from website, confidential, 16 Dec 2010. See also Prosecutor's motion to remove document from website, filed confidentially on 26 April 2010 by the *Amicus Curiae* Prosecutor assigned to Case No. IT-03-67-R77.3.

²⁸ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Professor Vojislav Šešelj's response/report on the Trial Chamber II decision of 16 December 2010, confidential, 10 Jan 2011.

²⁹ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Order to remove book from website, confidential, 31 Jan 2011.

³⁰ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Procès-verbal of reception of BCS translation of "Order to remove book from website", confidential, 8 Feb 2011.

³¹ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Registry Rule 33(B) submission on order to remove book from website, confidential, 21 Feb 2011.

³² *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Response to Šešelj's list of character witnesses, confidential, 11 Feb 2011, para. 10. See *supra* fn 9.

³³ 17 Feb 2011 Order, p. 3. The Trial Chamber noted that the material sought to be removed from the website allegedly revealed confidential information pertaining to protected witnesses.

Accused acknowledged receipt of the 17 February 2011 Order.³⁴ On 10 March 2011, the Registry notified the Trial Chamber that the material remained publicly available on the website as of that date.³⁵

13. On 31 October 2011, Trial Chamber II convicted the Accused in Case No. IT-03-67-R77.3 for having disclosed confidential information pertaining to protected witnesses in the Second Book.³⁶ The Trial Chamber sentenced the Accused to eighteen months imprisonment, which it ordered would be “served concurrently with the sentence of fifteen months imposed by the Chamber on 24 July 2009 in Case No. IT-03-67-R77.2.”³⁷ On 14 November 2011, the *Amicus Curiae* Prosecutor appealed the sentence imposed.³⁸ On 8 February 2012, the Accused also filed a notice of appeal.³⁹

3. Matters arising from Case No. IT-02-54-Misc.4

14. On 2 November 2010, at the hearing in the main *Šešelj* trial, the Accused stated that he had placed on the website material revealing the identity of [REDACTED].⁴⁰ The Prosecution requested Trial Chamber III to order the Accused to remove this material.⁴¹ On 4 November 2010, the Prosecution filed an addendum specifying that the material in question was submissions 458 and 459 and repeating its request for an order to the Accused to remove the material.⁴² On 1 December 2010, the Trial Chamber recused itself from deciding the request and referred the matter to the President of the Tribunal.⁴³ On 3 December 2010, the Acting President of the Tribunal assigned the Prosecution’s request to Trial Chamber II. On 9 December 2010, the Prosecution filed a motion

³⁴ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Procès-verbal of reception of BCS translation of “Order to remove confidential information from website”, confidential, 28 Feb 2011.

³⁵ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Submission pursuant to Rule 33(B) on the order to remove confidential information from website, confidential, 10 Mar 2010, para. 4.

³⁶ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Judgement, confidential, 31 Oct 2011.

³⁷ *Id.*, para. 82.

³⁸ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3-A, *Amicus Curiae* Prosecutor notice of appeal against sentence, public, 14 Nov 2011.

³⁹ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3-A, Notice of appeal against judgement on allegations of contempt of court of 31 October 2011, confidential, 8 Feb 2012.

⁴⁰ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Hearing, 2 Nov 2010, T. 16448-16449 (private session):

As for my criminal complaint [in submissions 458 and 459], I immediately put it on my internet web site. It is public, it was filed publicly, because [REDACTED] decided to disclose to the public all of his particulars. He also gave to newspapers and so on. And now later on, in the Registry, it was filed as confidential. Well, that’s a different problem. That was late. From the very first moment, it was put on my internet web site, and no one can remove it from there.

[REDACTED] was granted protective measures by decision issued on 15 December 2009 [REDACTED].

⁴¹ *Ibid.*

⁴² *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Addendum to Prosecution’s oral request for an order to remove Vojislav Šešelj’s submission Nos. 458 and 459 from website, confidential, 4 Nov 2010. See *supra* fn 8.

⁴³ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Hearing, 1 Dec 2010, T. 16507-16508.

before Trial Chamber II repeating, *inter alia*, its request for an order to the Accused to remove submissions 458 and 459.⁴⁴

15. By the Second 31 January 2011 Order, Trial Chamber II ordered the Accused to remove submissions 458 and 459 from the website no later than 14 February 2011 and ordered the Registry to report on the implementation of this order by 21 February 2011.⁴⁵ On 7 February 2011, the Accused acknowledged receipt of the Second 31 January 2011 Order.⁴⁶ On 21 February 2011, the Registry notified the Trial Chamber, *inter alia*, that both submissions remained publicly available as of that date.⁴⁷

4. Proceedings in Case No. IT-03-67-R77.4 regarding the First Decision

16. After issuing the First Decision on 9 May 2011, on 22 June 2011 this Trial Chamber, composed of Judges Kwon (presiding), Burton Hall and Howard Morrison, ordered the Registrar to provide it with screenshots of whether the documents, which the Accused had been ordered to remove by the 16 December 2011 Decision, the First and Second 31 January 2011 Orders and the 17 February 2011 Order, remained available on the website.⁴⁸ On 27 June 2011, the Registrar submitted screenshots dated 24 June 2011 indicating that the First, Second and Third Books, the Notice of Appeal, the Appeal Brief and Submissions 458, 459 and 466 remained publicly available by that date.⁴⁹

17. At the initial appearance on 6 July 2011, the Accused pleaded not guilty to the charges in the order in lieu of indictment issued by the First Decision.⁵⁰

B. Second Decision

18. On 16 May 2011, the Prosecution filed a motion before Trial Chamber III seised of the main *Šešelj* trial, requesting an order to the Accused to remove the Fourth Book, which was published on

⁴⁴ [REDACTED].

⁴⁵ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-Misc.4, Order to remove documents from website, confidential, 31 Jan 2011.

⁴⁶ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-Misc.4, Procès-verbal of reception of BCS translation of "Order to remove documents from website", confidential, 7 Feb 2011.

⁴⁷ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-Misc.4, Submission pursuant to Rule 33(B) on the order to remove documents from website, 21 Feb 2011, para. 4.

⁴⁸ Order to the Registrar regarding website, confidential and *ex parte*, 22 Jun 2011.

⁴⁹ Submission pursuant to Rule 33(B) on the order to Registrar regarding website, confidential and *ex parte*, 27 Jun 2011, para. 3 and Annex I and Annex II, containing screenshots of the website.

⁵⁰ *In the matter of Vojislav Šešelj*, Case No. IT-03-67-R77.4-I, Initial Appearance, 6 Jul 2011, T. 8. See also Scheduling order for initial appearance, public, 22 Jun 2011. On 7 July 2011, the Trial Chamber dismissed the Accused's oral motion, made at the initial appearance (T. 14-16), for provisional release, holding that "the detention regime of the Accused currently in place stems from the charges against him in Case No. IT-03-67 and that any request for provisional release should therefore be filed before the Trial Chamber seised of the proceedings in Case No. IT-03-67", Decision on the accused's oral motion for provisional release, public, 7 Jul 2011.

the website and contained confidential material pertaining to a large number of protected witnesses.⁵¹ On 3 June 2011, Trial Chamber III recused itself and referred the motion to the President of the Tribunal.⁵² On 5 July 2011, the President assigned the motion to this Trial Chamber.⁵³

19. By the 15 July 2011 Order, the Trial Chamber ordered the Accused and Nikola Šešelj, who is the website's registrant and the Accused's son, to remove the Fourth Book by 8 August 2011 and notified them that failure to comply with this order may constitute contempt of the Tribunal under Rule 77 of the Rules.⁵⁴ The Trial Chamber also ordered the Registrar to report on the implementation of the order by 15 August 2011.⁵⁵ On 20 July 2011, the Accused acknowledged receipt of the 15 July 2011 Order.⁵⁶ On 10 August 2011, Nikola Šešelj filed a response, stating that the Accused "is sole owner of the website and exclusively decides what will appear" on it.⁵⁷ On 12 August 2011, the Registrar notified the Trial Chamber that the Fourth Book remained publicly available on the website as of 12 August 2011.⁵⁸

20. In the Second Decision, issued on 21 October 2011, the Trial Chamber held, in view of the Accused's failure to comply with the 15 July 2011 Order, that there were sufficient grounds according to Rule 77(D) to proceed against him for contempt of the Tribunal.⁵⁹ The Trial Chamber, therefore, amended the order in lieu of indictment to include the Accused's failure to comply with the 15 July 2011 Order.⁶⁰ Because the amendment introduced a new basis for conviction, the Trial Chamber ordered that a further appearance would be held.⁶¹

⁵¹ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Prosecution's urgent motion for an order to remove the Accused's new book from website, confidential with confidential annex, 16 May 2011. The Prosecution submitted that the Fourth Book contains submissions 458, 459, 466 and 467, the latter of which was filed confidentially on 15 April 2011 following instruction of the President's Office, *id.*, fn 2. The Accused confirmed reception of confidential Submission 467, Procès-verbal of reception of "Submission No. 467", confidential, 29 Apr 2011. According to the Prosecution, the Fourth Book discloses identifying information and excerpted testimony of 23 protected witnesses [REDACTED]. See also *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Prosecution's supplemental annex to its motion for an order to remove the accused's new book from website, confidential, 14 Sep 2011.

⁵² *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Décision relative à la requête de l'accusation aux fins de retrait du site internet du nouveau livre de l'accusé, confidential, 3 Jun 2011.

⁵³ *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Order assigning judges to a motion by the Prosecution, confidential, 5 Jul 2011.

⁵⁴ 15 July 2011 Order, p. 3.

⁵⁵ *Ibid.*

⁵⁶ *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Procès-verbal of reception of the BCS translation of "Order to remove book from website", confidential, 20 Jul 2011.

⁵⁷ *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Nikola Šešelj's response to the Trial Chamber Order of 15 July 2011 and notification of appointment of counsel, confidential, 10 Aug 2011, p. 2.

⁵⁸ *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Submission pursuant to Rule 33(B) on the order to remove book from website, confidential, 12 Aug 2011, para. 3.

⁵⁹ Second Decision, p. 3. See also 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.

⁶⁰ Second Decision, p. 4.

⁶¹ *Ibid.*

21. On 4 November 2011, a further appearance was held before Judge Burton Hall, at which the Accused declined to enter a plea in respect of the new charge.⁶² A further appearance was held on 11 November 2011, at which the Accused again did not enter a plea. Pursuant to Rule 62(A)(iv) of the Rules, a plea of not guilty was, therefore, entered on the Accused's behalf.⁶³

C. Third Decision

22. On 5 October 2011, the Prosecution filed a motion before Trial Chamber III seised of the main *Šešelj* trial, requesting an order to the Accused to remove from the website submission 478, which revealed the names and excerpted testimony of a number of protected witnesses.⁶⁴ On 6 October 2011, Trial Chamber III recused itself from considering the motion and referred it to the President of the Tribunal.⁶⁵ On 28 October 2011, the Acting President of the Tribunal assigned the motion to this Trial Chamber.⁶⁶

23. By the 3 November 2011 Decision, Trial Chamber II ordered the Accused to remove submission 478 from the website by 15 November 2011.⁶⁷ The Trial Chamber notified the Accused that failure to comply with the order may constitute contempt of the Tribunal under Rule 77 and ordered the Registry to report on the implementation of the decision by 18 November 2011.⁶⁸ On 9 November 2011, the Accused acknowledged receipt of the 3 November 2011 decision.⁶⁹ On 18 November 2011, the Registrar reported that submission 478 remained publicly available on the website as of that date.⁷⁰

⁶² Further appearance, 4 Nov 2011, T. 25-26; Scheduling order for further initial appearance, public, 28 Oct 2011.

⁶³ Further appearance, 11 Nov 2011, T. 37; Scheduling order, public, 9 Nov 2011.

⁶⁴ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Prosecution's urgent motion for an order to remove submission 478 from website, confidential, 5 Oct 2011. See *supra* fn 11. The witnesses are the same as noted earlier, *supra* fn 51. Because the content of submission 478 mirrors that of submission 467, which is contained in the Fourth Book, the Prosecution initially filed the motion before Trial Chamber II, which considered the Prosecution's motion of regarding the Fourth Book (*Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Prosecution's urgent motion for an order to remove submission 478 from website, confidential, 27 Sep 2011; see also *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Prosecution's urgent motion for an order to remove the Accused's new book from website, confidential with confidential annex, 16 May 2011). On 4 October 2011, the Trial Chamber dismissed the motion, holding that it did not have the power to consider it absent a referral by the President of the Tribunal, which had happened in respect of the Prosecution's motion concerning the Fourth Book, *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.1, Decision on Prosecution's urgent motion for an order to remove submission 478 from website, confidential, 4 Oct 2011.

⁶⁵ *Prosecutor v. Šešelj*, Case No. IT-03-67-T, Décision relative à la requête de l'Accusation aux fins de retrait du site internet de la requête no. 478 de l'Accusé, confidential, 6 Oct 2011.

⁶⁶ *Prosecutor v. Šešelj*, Case No. IT-03-67-Misc.3, Order assigning judges to a motion by the Prosecution, 28 Oct 2011.

⁶⁷ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.3, Decision on Prosecution's urgent motion for an order to remove submission 478 from website, confidential, 3 Nov 2011, p. 2.

⁶⁸ *Ibid.*

⁶⁹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-Misc.3, Procès-verbal of reception of BCS translation of "Decision on Prosecution's urgent motion for an order to remove submission 478 from website", confidential, 9 Nov 2011.

⁷⁰ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-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 478 from website, confidential, 18 Nov 2011. See also *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-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 478 from website, confidential, 23 Nov 2011.

24. On 16 December 2011, the President of the Tribunal assigned Judge Stefan Trechsel and Judge Melville Baird to replace Judge Hall and Judge Morrison.⁷¹ On 29 March 2012, Judge Trechsel was designated presiding Judge.⁷²

25. In the Third Decision, issued on 29 March 2012, the Trial Chamber held, in view of the Accused's failure to comply with the 3 November 2011 Decision, that there were sufficient grounds according to Rule 77(D) to proceed against him for contempt of the Tribunal.⁷³ The Trial Chamber, therefore, amended the order in lieu of indictment to include the Accused's failure to comply with the 3 November 2011 Decision.⁷⁴ Because the amendment introduced a new basis for conviction, the Trial Chamber ordered that a further appearance would be held.⁷⁵ As noted at the outset of this judgement, this order in lieu of indictment is the operative Indictment in this case.⁷⁶

26. On 17 April 2012, a further appearance was held before Judge Trechsel, at which the Accused pleaded not guilty in respect of the new charge.⁷⁷

III. OTHER PRE-TRIAL MATTERS

A. The Accused's requests at the status conference on 19 March 2012

27. On 19 March 2012, a status conference was held at which the Accused stated that he would testify and that Dejan Mirović, a legal associate assigned to the main *Šešelj* trial, would conduct the examination-in-chief.⁷⁸ The Accused repeated this at the further appearance on 17 April 2012.⁷⁹ At the further appearance, the Accused also made three requests. He stated that he:

- 1) wished to challenge the jurisdiction of the Tribunal to prosecute him in this case ("first request"),⁸⁰
- 2) intended to request the disqualification of Judge Kwon ("second request"),⁸¹ and

⁷¹ Order replacing judges, confidential, 16 Dec 2011. See also such orders issued confidentially by the President of the Tribunal on 16 December 2011 in Case Nos. IT-03-67-Misc.1, IT-03-67-Misc.2, IT-03-67-Misc.3 and IT-02-54-Misc.4.

⁷² Order designating a presiding Judge, confidential, 29 Mar 2012.

⁷³ Third Decision, p. 3.

⁷⁴ *Id.*, p. 4.

⁷⁵ *Ibid.*

⁷⁶ *Supra*, para. 4.

⁷⁷ Further appearance, 17 Apr 2012, T. 55; Scheduling order for further appearance, public, 5 Apr 2012.

⁷⁸ Status conference, 19 Mar 2012, T. 46.

⁷⁹ Further appearance, 17 Apr 2012, T. 56.

⁸⁰ Further appearance, 17 Apr 2012, T. 56.

⁸¹ *Id.*, T. 58.

- 3) requested permission to hold “a press conference for Serbian journalists” by video-conference link in advance of the 6 May 2012 parliamentary elections in Serbia (“third request”).⁸²

On 24 April 2012, the Trial Chamber noted, with regard to the first request, that pursuant to Rule 72(A) read in conjunction with Rule 77(E), challenges to jurisdiction shall be made in writing and shall be brought within ten days from reception of the supporting material.⁸³ As the Accused had received the entirety of the material supporting the Indictment by 5 April 2012, any preliminary challenge to the jurisdiction of the Tribunal in this case should have been filed by 15 April 2012.⁸⁴ Nevertheless, the Trial Chamber stated that should the Accused raise the issue at trial, it would in the interests of justice hear arguments on the matter, which would be dealt with in the judgement.⁸⁵

28. With respect to the second request, the Trial Chamber, recalling Rule 15(B)(i) of the Rules, ordered the Accused to file written substantiation of his challenge of Judge Kwon no later than seven days after reception of the translation of the 24 April 2012 order in a language he understands.⁸⁶ By the same date, the Accused was ordered to file the lists and information required by Rule 65 *ter*(G) of the Rules.⁸⁷ The Trial Chamber also denied the third request since the Accused was not detained by virtue of an order of this Chamber and it fell “squarely within the purview of the Registry”.⁸⁸ On 8 May 2012, the Accused confirmed reception of the BCS translation of the 24 April 2012 order as a result of which the deadline would lapse on 15 May 2012.⁸⁹

29. On 15 May 2012, the Accused filed a witness list, which contained only himself as a witness for the Defence and wherein it was repeated that Dejan Mirović would examine the Accused in-chief.⁹⁰ However, the Accused did not file written substantiation of his request for disqualification of Judge Kwon. On 29 May 2012, the Trial Chamber scheduled the pre-trial conference for 12 June 2012 to be followed immediately by trial.⁹¹ The Trial Chamber also allowed Dejan Mirović to conduct the examination-in-chief, which would take no longer than two hours.⁹²

⁸² Further appearance, 17 Apr 2012, T. 59, 61.

⁸³ Order on matters raised by the accused during the further initial appearance, public, 24 Apr 2012, p. 2.

⁸⁴ *Ibid.*

⁸⁵ *Id.*, fn. 7.

⁸⁶ *Id.*, p. 4.

⁸⁷ Order on matters raised by the accused during the further initial appearance, public, 24 Apr 2012, p. 4.

⁸⁸ *Id.*, p. 3.

⁸⁹ Procès-verbal of reception of the BCS translation of the “Order on matters raised by the accused during the further initial appearance”, public, 8 May 2012.

⁹⁰ List of witnesses submitted pursuant to Rule 65 *ter* (G) of the Rules of Procedure and Evidence of the ICTY, public, BCS original received on 15 May 2012, English translation filed on 24 May 2012.

⁹¹ Order scheduling trial, public, 29 May 2012.

⁹² *Id.*, p. 2.

30. On 30 May 2012, the Trial Chamber was informed by the Registry's *Pro Se* Office that the Office of Legal Aid and Detention Matters ("OLAD"), following a request by the Accused, had granted Dejan Mirović a privileged visit to the United Nations Detention Unit ("UNDU") for the purpose of preparing for trial in this case.⁹³ However, OLAD had denied the request in respect of Nemanja Šarović, a case manager assigned to the main *Šešelj* trial, because he "is not assigned to the case in question".⁹⁴

B. Pre-trial conference

31. On 12 June 2012, a pre-trial conference was held, at which the Accused repeated his request for disqualification of Judge Kwon and also submitted that he had been "denied the right to legal assistance" due to OLAD's denial of his request regarding the case manager, Nemanja Šarović.⁹⁵ The Trial Chamber recalled that it had ordered the Accused to provide written substantiation of his request for disqualification, something which he had not done, and rejected the request.⁹⁶ The Trial Chamber also reminded the Accused that it had allowed Dejan Mirović to conduct the examination-in-chief.⁹⁷ The Accused then indicated that he requested reconsideration of the Trial Chamber's decision with respect to Dejan Mirović's participation, such that also Nemanja Šarović would be permitted to appear in the proceedings.⁹⁸ Having adjourned to deliberate upon this request in light of the Accused's oral submissions, the Trial Chamber ruled that it would not reconsider the decision to allow only Dejan Mirović to assist the Accused.⁹⁹ The Accused then stated that:

[i]n the absence of my legal advisor and case manager, I'm not able to testify because there is no one to conduct the examination-in-chief, and without the possibility of directly consulting them, although I speak to my legal advisor regularly over the phone, I nevertheless need to have direct contact with him. So without such assistance I cannot present my Defence, and without such aid from Mr. Dejan Mirović and without the assistance of Nemanja Šarović, my Case Manager, I cannot present any final submissions.¹⁰⁰

The Trial Chamber noted that this concluded the pre-trial conference and moved to trial.¹⁰¹

⁹³ Email from the *Pro Se* Office to the Trial Chamber's legal officer, 30 May 2012, forwarding a letter from the deputy head of OLAD to the Accused, dated 25 May 2012 ("OLAD Letter"). OLAD stated that as the "Decision on financing" issued by Trial Chamber III in the main *Šešelj* trial is not applicable to the present case, OLAD would not cover expenses of the Accused's legal associates in this case. However, should the Trial Chamber require Dejan Mirović to be present, OLAD would cover his travel expenses.

⁹⁴ OLAD Letter, p. 1.

⁹⁵ Pre-trial conference, 12 Jun 2012, T. 65-67.

⁹⁶ *Id.* T. 67, 70.

⁹⁷ Pre-trial conference, 12 Jun 2012, T. 68-70.

⁹⁸ *Id.* T. 72.

⁹⁹ *Ibid.*

¹⁰⁰ *Id.* T. 72-73.

¹⁰¹ *Id.* T. 73.

IV. TRIAL PROCEEDINGS

32. At the trial phase of the proceedings held on 12 June 2012, the Trial Chamber noted that the Accused had received the Indictment and the supporting material. It then invited the Accused to present a defence by taking the stand.¹⁰² The Trial Chamber stated that it would conduct the examination, to which the Accused repeated his earlier statement of being unable to present a defence.¹⁰³ The Accused submitted that he had not waived any of his rights, including the right to present a defence case and the right to present final submissions.¹⁰⁴ He also argued that he did not wish to participate in any proceedings until he was given the possibility of having Dejan Mirović and Nemanja Šarović present and until he was given a possibility of having contact with them.¹⁰⁵

33. Having adjourned to consider the Accused's submissions, the Trial Chamber ruled that the hearing would be adjourned until 18 June 2012, noting that:

the basic rules for the hearing are not changed; that is to say, the Chamber maintains that Mr. Mirović is welcome in the courtroom to question Mr. Šešelj, as an accused witness, but no assistance by a Case Manager is warranted. And this is also meant as a warning. In case, Mr. Šešelj, that you will persist in the attitude you have displayed today, the Chamber will go on with the trial. It will not change the basic rules. But it gives you a last chance to ponder over the attitude you will take in this case.¹⁰⁶

34. On 18 June 2012, the Trial Chamber noted that Dejan Mirović was not present. It invited the Accused to take the stand, noting that it would give him the possibility "to state your view of the facts of this case" rather than being questioned by the Trial Chamber.¹⁰⁷ The Accused stated that he refused to mount a defence "because he has been denied his procedural rights. He has been denied a case manager, a legal advisor".¹⁰⁸ The Trial Chamber noted that that all the material germane to the trial is on the record, and invited the Accused to make final submissions.¹⁰⁹

35. Referring to the contempt proceedings in Case No. IT-03-67-R77.3, the Accused submitted that the proceedings were partial and submitted that he had "the right to have my legal advisor here in the courtroom with me, Dejan Mirović LL.M, and my case manager, Nemanja Šarović, who also has a degree in law."¹¹⁰ The Accused referred to OLAD's decision not to assign Nemanja Šarović to the present case and noted that he had been assigned to the main *Šešelj* trial and previous contempt

¹⁰² Hearing, 12 Jun 2012, T. 73.

¹⁰³ *Ibid.*

¹⁰⁴ *Id.*, T. 74.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Id.*, T. 76.

¹⁰⁷ Hearing, 18 Jun 2012, T. 78. At the pre-trial conference, the Accused had stated that he would not take the stand for fear of being 'tricked' by the Judges, submitting that "there is not a single decent man who would accept to become a Judge at this Tribunal, and it is for this reason that I don't trust any of you" (Pre-trial conference, 12 Jun 2012, T. 75).

¹⁰⁸ Hearing, 18 Jun 2012, T. 79.

¹⁰⁹ *Ibid.*

¹¹⁰ *Id.*, T. 80.

proceedings.¹¹¹ The Accused submitted that the Trial Chamber had prevented him from mounting a defence¹¹² and that the fact that he is self-represented “does not mean that I have to appear totally by myself in this courtroom” and that he was “entitled to professional and expert assistance and [...] to technical assistance.”¹¹³ The Trial Chamber thereafter closed the trial proceedings.¹¹⁴

V. SUBMISSIONS OF THE ACCUSED

36. As noted above, the Accused elected not to make submissions in his defence.¹¹⁵

VI. LAW

37. While the Tribunal’s power in respect of contempt is not expressly articulated in the Statute, it is firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded.¹¹⁶ As such, the Tribunal possesses an inherent power to deal with conduct interfering with its administration of justice.¹¹⁷

38. Rule 77(A) of the Rules identifies, in a non-exhaustive fashion,¹¹⁸ conduct falling under the Tribunal’s inherent jurisdiction. According to this provision, the Tribunal:

(A) in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who:

- (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;
- (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;
- (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
- (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; or

¹¹¹ Hearing, 18 Jun 2012, T. 80.

¹¹² *Id.*, T. 81.

¹¹³ *Ibid.*

¹¹⁴ *Id.*, T. 82.

¹¹⁵ *Supra* paras 31-35.

¹¹⁶ *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on allegations of contempt against prior counsel, Milan Vujin, 31 Jan 2000 (“*Vujin Appeal Judgement*”), para. 13; *Šešelj Appeal Judgement*, para. 17; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on appeal by Anto Nobile against finding of contempt, 30 May 2001 (“*Nobile Appeal Judgement*”), para. 36.

¹¹⁷ *Vujin Appeal Judgement*, para. 13. See also *id.*, paras 18, 26(a); *Nobile Appeal Judgement*, para. 30.

¹¹⁸ *Nobile Appeal Judgement*, para. 30.

- (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

39. The Trial Chamber has charged the Accused with contempt of the Tribunal pursuant to Rule 77(A) and (A)(ii) of the Rules for knowingly and wilfully having interfered with the administration of justice by failing to remove from the website confidential information in violation of orders of a Chamber.¹¹⁹

40. The *actus reus* of the crime of interfering with the administration of justice pursuant to Rule 77(A) consists in “[a]ny deliberate conduct which creates a real risk that confidence in the Tribunal’s ability to grant effective protective measures would be undermined”.¹²⁰ Importantly, “a violation of a court order as such constitutes an interference with the International Tribunal’s administration of justice.”¹²¹ The *mens rea* is established where an accused wilfully and knowingly interfered with the Tribunal’s administration of justice.¹²² The Appeals Chamber has held that “once a knowing violation of a Chamber’s order is proved, ‘[n]o additional proof of harm to the [...] Tribunal’s administration of justice is required’ in order to sustain a conviction for contempt”.¹²³

41. With respect to Rule 77(A)(ii), the *actus reus* consists in “the physical act of disclosure of information relating to proceedings before the Tribunal, when such disclosure would breach an order of a Chamber.”¹²⁴ The *mens rea* is knowledge of the facts that make the conduct of the accused illegal, that is, knowledge that the disclosure was in violation of a Chamber’s order.¹²⁵ The

¹¹⁹ Third Decision, Indictment, p. 2,

¹²⁰ *Prosecutor v. Marijačić and Rebić*, Case No. IT-95-14-R77.2, Judgement, 10 Mar 2006 (“*Marijačić and Rebić* Trial Judgement”), para. 50, where it was also held that “[p]ublic confidence in the effectiveness of such orders is absolutely vital to the success of the work of the Tribunal.”

¹²¹ *Prosecutor v. Marijačić and Rebić*, Case No. IT-95-14-R77.2-A, Judgement, 27 Sep 2006, para. 44. See also *Prosecutor v. Jović*, Case No. IT-95-14&14/2-R77-A, Judgement, 15 Mar 2007 (“*Jović* Appeal Judgement”), para. 30, where the Appeals Chamber held that “[a]ny defiance of an order of a Chamber *per se* interferes with the administration of justice for the purposes of a conviction for contempt.”

¹²² *Prosecutor v. Beqaj*, Case No. IT-03-66-T-R77, Judgement on contempt allegations, 27 May 2005, para. 22.

¹²³ *Šešelj* Appeal Judgement, para. 20, citing *Jović* Appeal Judgement, para. 30.

¹²⁴ *Marijačić and Rebić* Trial Judgement, para. 17. *Jović* Appeal Judgement, para. 27. Publication of a witness’s identity where protective measures have been granted to avoid such disclosure, with knowledge of the existence of those measures and with the intention of frustrating their effect, constitutes interference with the administration of justice, *Nobilo* Appeal Judgement, para. 40(c).

¹²⁵ *Jović* Appeal Judgement, para. 27. See also *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Judgement, 31 Oct 2011, para. 32, where the Trial Chamber also held that “[p]roof of actual knowledge of an order, which can be inferred from a variety of circumstances, satisfies this element” and noted the Appeals Chamber’s finding that, while mere negligence in failing to ascertain whether an order had been made granting protective measures to a particular witness could never amount to contempt, either wilful blindness or reckless indifference to the existence of the order granting protective measures to a witness is sufficiently culpable conduct to be dealt with as contempt (*Nobilo* Appeal Judgement, paras 45, 54).

Appeals Chamber has held that “[k]nowledge may be proven by evidence other than the accused’s statement expressing a particular intent to disclose protected witness identities.”¹²⁶

42. Pursuant to Rule 87(A) of the Rules, the standard of proof in respect of the issue of guilt is proof beyond a reasonable doubt.

VII. DISCUSSION AND FINDINGS

A. Introduction

43. The Indictment charges the Accused with contempt of the Tribunal pursuant to Rule 77(A) and Rule 77(A)(ii). However, the factual allegations of the Indictment only concern his failure to comply with orders issued by Chambers to remove confidential material from the website. The Trial Chamber will, therefore, examine the case under Rule 77(A) and not under Rule 77(A)(ii).

B. Actus reus

44. By virtue of the Orders and Decisions, the Accused was – and remains – obligated to remove the First, Second, Third and Fourth Books, the Notice of Appeal, the Appeal Brief and submissions 458, 459, 466 and 478 from the website.¹²⁷ It is established that the Accused did not comply with the orders to remove the material by the deadlines set in the Orders and Decisions.¹²⁸

45. 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. The Trial Chamber notes the Accused’s statements regarding submissions 458 and 459 at the hearing on 2 November 2010 in the main *Šešelj* trial and his submission, filed before Trial Chamber II, that he did not intend to remove the Second Book from the website.¹²⁹ The Trial Chamber has also considered statements during the trial in Case No. IT-03-67-R77.3 which show that he controls what is placed on the website.¹³⁰

¹²⁶ *Šešelj* Appeal Judgement, para. 26, where the Appeals Chamber also noted the Trial Chamber’s observation that the Accused had signed a receipt for the confidential material at issue in the case, which explained the material’s confidential nature.

¹²⁷ *Supra*, paras 5-26.

¹²⁸ Regarding 1) the First Book, the Notice of Appeal and the Appeal Brief, see *supra* para. 16; see also para. 6; 2) the Second Book, see *supra* para. 11, 16; see also para. 10; 3) submissions 458 and 459, see *supra* paras 15, 16; 4) the Third Book and submission 466, see *supra* paras 12, 16; 5) the Fourth Book, see *supra* para. 19; and 6) submission 478, see *supra* para. 23.

¹²⁹ *Supra* paras 10, 14.

¹³⁰ *Prosecutor v. Šešelj*, Case No. IT-03-67-R77.3, Pre-trial conference, 22 Feb 2011, T. 67:

Secondly, at my proposal, the appropriate authorities of the Serb Radical Party appointed my oldest son, Nikola Seselj, to be editor of my website, since in that case I am quite sure that he is not going to relent to any kind of pressure and that I’m going to be the main creator of the website and that nobody is going to intimidate him in order to remove anything from my website. What I decide once and for all to have on my website remains there. Once and for all. And no one can do away with that.

Lastly, the Trial Chamber has considered Nikola Šešelj's submission, filed before the Trial Chamber, that the Accused is "sole owner of the website and exclusively decides what will appear" on it."¹³¹

46. The Trial Chamber is satisfied that the material elements of contempt pursuant to Rule 77(A) have been proved beyond reasonable doubt.

C. Mens rea

47. The Accused has submitted notes confirming receipt of the Orders and Decisions and of underlying decisions and submissions.¹³² The Trial Chamber notes that the Accused explicitly stated with respect to the Second Book that he did not intend to comply with the order to remove it from the website and that he stated to Trial Chamber III in the main Šešelj trial that he had confidential material on the website pertaining to [REDACTED].¹³³

48. The Trial Chamber is satisfied beyond reasonable doubt that the Accused was aware of the Orders and Decisions and his obligation to remove the confidential material from the website.

D. Conclusion

49. For the above reasons, the Trial Chamber finds the Accused guilty of contempt of the Tribunal pursuant to Rule 77(A) for knowingly and wilfully interfering with the Tribunal's administration of justice by failing to comply with Chambers orders to remove confidential material from the website.

VIII. SENTENCING

A. Submissions

50. The Accused has not made any submissions concerning sentencing.

B. Law

51. Rule 77(G) of the Rules provides that the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.

In a similar vein, see Hearing, 8 Jun 2011, T. 381-382.

¹³¹ *Supra* para. 19.

¹³² *Supra*, paras 3-26 with further references to procès-verbaux.

¹³³ *Supra* paras 10, 14.

52. Article 24(2) of the Statute and Rule 101(B) of the Rules provide factors to be taken into account in determining sentence, although they do not constitute “binding limitations on a chamber’s discretion to impose a sentence”.¹³⁴ The most important factors to be considered in determining the appropriate penalty in this case are the gravity of the contempt and the need to deter repetition and similar conduct by others.¹³⁵ The Chamber also considers whether there are any aggravating and mitigating circumstances.

C. Conclusions

53. 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.

54. As it addresses the issue of sentencing, the Trial Chamber considers 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 and Decisions requiring him to remove confidential material which he has disclosed on many occasions over the course of several years, and this flagrant disregard for the Orders and Decisions amounts to a direct attack upon the judicial authority of the Tribunal.

55. The Accused has two previous convictions for contempt of court. In Case No. IT-03-67-R77.2 he was convicted for having revealed confidential information and evidence relating to three witnesses in the First Book. In Case No. IT-03-67-R77.3, which is currently on appeal, the Trial Chamber convicted him, *inter alia*, for having disclosed confidential witness information in the Second Book. The Trial Chamber has considered these convictions as aggravating factors.

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

57. In determining the sentence, the Trial Chamber has had regard to the three aspects discussed above, that is, the gravity of the Accused’s offence, his repetitively defiant conduct concerning the

¹³⁴ *Prosecutor v. Haraqija and Morina*, Case No. IT-04-84-R77.4, Judgement on allegations of contempt, 17 Dec 2008 (“*Haraqija and Morina* Judgement”), para. 103; *Prosecutor v. Krstić*, Case No. IT-98-33-A, Judgement, 19 Apr 2004, paras 241-242.

¹³⁵ *Haraqija and Morina* Judgement, para. 103; *Prosecutor v. Margetić*, Case No. IT-95-14-R77.6, Judgement on allegations of contempt, para. 84.

Orders and Decisions, and his prior convictions for related crimes. 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.

IX. DISPOSITION

58. For the foregoing reasons, pursuant to Rules 54 and 77 of the Rules, the Trial Chamber:
- 1) **FINDS** Vojislav Šešelj **GUILTY** of one count of contempt of the Tribunal as set out in the Indictment, punishable under Rule 77(A) of the Rules,
 - 2) **SENTENCES**, by majority, Judge Trechsel dissenting, Vojislav Šešelj to a single term of imprisonment of two years, and
 - 3) **LIFTS** the *ex parte* status of the following filings in the present case:
 - a. Order to the Registrar regarding website (22 June 2011);
 - b. Submission pursuant to Rule 33(B) on the order to Registrar regarding website (27 June 2011), and
 - c. Order designating a presiding Judge (29 March 2012)

Judge Trechsel appends a partly dissenting opinion.

Confidential and public versions of this judgement are issued in English and French, the English confidential text being authoritative.

Dated this twenty-eighth day of June 2012

At The Hague

The Netherlands

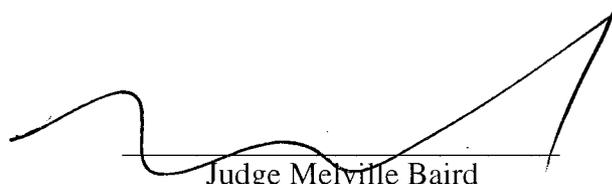


Judge Stefan Trechsel

Presiding



Judge O-Gon Kwon



Judge Melville Baird

[Seal of the Tribunal]

PARTLY DISSENTING OPINION OF JUDGE TRECHSEL

59. I am in full agreement with my colleagues as far as the conviction of the Accused is concerned. Disobedience, non-compliance with an order of a Chamber is quintessentially contempt of court.

60. I respectfully disagree, however, with the severity of the sentence the majority has imposed. In my view, it ought to be considerably less. Of course, the Accused has already twice been convicted and sentenced for contempt of court. He is a determined recidivist whose very attitude to the Tribunal is contemptuous. The Accused would not miss an opportunity to state his enmity to the Tribunal¹³⁶ and to offend its Judges.¹³⁷ In the present case he stubbornly remained inactive and omitted to comply with a multitude of orders by Trial Chambers and the Appeals Chamber. All these elements enhance the gravity of his offence.

61. However, contempt of court is a vague concept which, although it rests upon a long tradition, at least in the common law system, in my view is difficult to reconcile with the requirement of *nullum crimen sine lege stricta*. It covers a variety of acts and omissions, such as insults to court officers, misbehaviour in the courtroom, non-compliance with orders, disclosure of secret information, exertion of undue influence upon witnesses and, although it is set out as a different offence (Rule 91 RPE) but with the same maximal penalty (Rule 91(G)), perjury. This leads me to say that “contempt of court is not simply contempt of court”. While this term can be used uniformly for convictions of varying manifestations of contempt, when it comes to sentencing, the differences matter.

4. By virtue of Article 24(1) of the Statute, “[i]n determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia.” Based on this Rule, I shall now look at Serbian law.

62. The Serbian Criminal Code provides for imprisonment of three months to five years for perjury in criminal proceedings.¹³⁸ However, failure of a serviceman to obey an order of a superior carries a maximum penalty of only three years imprisonment.¹³⁹ Disobedience of a court order is regulated in the Criminal Procedure Code, where it is stated:

If the person specified in paragraph 1 of the present Article, with the exception of the defendant and after pronouncing of the fine specified in paragraph 3 of the present Article continues to disturb the order and disobey the instructions of the President of the Trial Chamber regarding

¹³⁶ Initial appearance, 6 Jul 2011, T. 3; Further appearance, 4 Nov 2011, T. 17; Further appearance, 17 Apr 2011, T. 49.

¹³⁷ See, e.g., Hearing, 18 Jun, T. 82.

¹³⁸ Republic of Serbia, Criminal Code, Official Gazette of the Republic of Serbia, No. 85/2005, Art. 335(3).

¹³⁹ Republic of Serbia, Criminal Procedure Code, Official Gazette of the Republic of Serbia, No. 46/2006, Art. 323(4).

maintenance of order, and by doing so displays serious contempt of the court and seriously frustrates conducting of the trial, the President of the Trial Chamber shall make a separate record which shall include the statements of such person and description of his behavior, and shall submit this record together with the record of the trial and, when necessary, with a copy of other documents, to the President of the Court. The President of the Court may within 8 days issue a decision on fine amounting up to 450,000 CSD or imprisonment up to 7 days, i.e. may pronounce both penalties to the person specified in paragraph 3 of the present Article.

63. Under the law of the Republic of Serbia, unauthorised disclosure by, for instance, a lawyer or a physician, of secrets which have come to his knowledge during the performance of his professional duty is punishable with a fine or imprisonment up to one year.¹⁴⁰

64. This will suffice to show that in domestic Serbian law there is a considerable difference between the sanctions for contemptuous conduct of varying gravity. This gravity is a function of the values against which the offence was directed. Applied to the present case, I compare the values at stake in the previous convictions of the Accused for contempt of court and those at stake in the present case. Disclosure of the identity of protected witnesses endangers their life, the highest or one of the highest values the law protects. The non-compliance with an order of the Tribunal endangers the functioning of that institution, its legitimate claim for respect. These are certainly also values which merit protection. However, in my view they are not on the same level as life and limb.

65. For these reasons, in my view, a sentence considerably less severe than that decided upon by the majority would have been appropriate in the present case.



Judge Stefan Trechsel

Dated this twenty-eighth day of June 2012

At The Hague

The Netherlands

¹⁴⁰ Republic of Serbia, Criminal Code, Art. 141(1).