



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-T  
Date: 28 December 2011  
Original: ENGLISH  
French

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**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, Presiding  
Judge Frederik Harhoff  
Judge Flavia Lattanzi

**Registrar:** Mr John Hocking

**Decision of:** 28 December 2011

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

**PUBLIC**

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**PARTIALLY DISSENTING OPINION OF JUDGE LATTANZI ON THE  
DECISION ON VOJISLAV ŠEŠELJ'S MOTION FOR CONTEMPT AGAINST  
CARLA DEL PONTE, HILDEGARD UERTZ-RETZLAFF AND DANIEL  
SAXON**

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**The Office of the Prosecutor**

Mr Mathias Marcussen

**The Accused**

Mr Vojislav Šešelj

**Amicus Curiae**

Mr William E. Hoffmann, Jr.

I fully subscribe to the decision of the Chamber, taken on the basis of the *Amicus Curiae* Report, that there are no sufficient grounds to instigate proceedings for contempt against the persons listed in the disposition of the Decision, in para 29.

Nevertheless, and with all due respect to the Chamber, I subscribe neither to its decision to file an *inter partes* version of the Report nor to its subsequent decision not to admit such a version – or, at least, a public redacted version – into evidence in the main Case.<sup>1</sup>

With regard to the question of filing an *inter partes* version of the *Amicus Curiae* Report, I consider, above all, that the principle of publicity of all the proceedings before the Tribunal which is imperative in a main Case, except when there is a need to protect witnesses and other individuals who could be put at risk by revealing some information, is also imperative for the Chamber in proceedings for contempt of court. I would even have preferred the filing of a less redacted public version<sup>2</sup> than the public version of the Report filed on 28 October 2011<sup>3</sup> and I was wrong not to attach a dissenting opinion to that filing: *errare humanum est, perseverare diabolicum*.

I must therefore maintain firmly here that the principle of transparency of some information must be ensured and guaranteed to the two Parties at the very least. There follows the need, in my opinion, to file an *inter partes* version of the Report.<sup>4</sup> Even if some redactions in the public version of the Report are also imperative in an *inter partes* version, the latter would still give more information to the Parties about the investigation conducted by the *Amicus Curiae* than that given in the heavily redacted public version.

I consider, moreover, that an *inter partes* version of the Report would have allowed the Parties to have a more acute understanding and awareness of the facts of the investigation and the reasoning followed by the *Amicus* in reaching the conclusion which the Chamber itself subsequently adopted, precisely because it gained an understanding and full awareness of all the facts and the reasoning followed in the Report. In other words, and notwithstanding the fact that the methodology used by the *Amicus* is revealed in the public version of the Report, I consider that the latter does not allow the Parties to understand the arguments on the basis of which the *Amicus* took some decisions on the conduct of the investigation and on the basis of which he reached the conclusion that “there are not sufficient grounds to instigate proceedings under Rule 77 against any identifiable person in this case as alleged in the Accused’s Motion and the statements and testimony submitted in support thereof.”<sup>5</sup> This remark

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<sup>1</sup> The Prosecution suggested filing an *inter partes* version of the Report and its admission into evidence in the main Case in its Observations on the Report: see “Prosecution’s Observations on *Amicus* Report Filed Pursuant to Trial Chamber’s ‘Decision in Reconsideration of the Decision of 15 May 2007 on Vojislav Šešelj’s Motion for Contempt Against Carla Del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon’”, public with confidential annex, 14 November 2011, (“Prosecution’s Observations”), para 3.

<sup>2</sup> The Prosecution also does not seem to understand the reason for so many redactions in the public version of the Report: see Prosecution’s Observations, paras 8 and 9.

<sup>3</sup> “Decision on New Filing of Public Redacted Version of the *Amicus Curiae* Report”, public, 28 October 2011 (“Decision of 28 October 2011”).

<sup>4</sup> [redacted]

<sup>5</sup> “Decision on Vojislav Šešelj’s Motion for Contempt against Carla Del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon and on the Subsequent Requests of the Prosecution”, public, 22 December 2011, para 23.

is all the more important, in my opinion, in light of the individual opinion rendered in the Annex to this Decision by the Presiding Judge, who has particularly made critical remarks on the methodology used by the *Amicus* in conducting his investigation.

Moreover, I consider that the consequence of the Chamber's decision not to file an *inter partes* version of the Report, that is, the decision not to admit an *inter partes* version into evidence in the main Case, is very serious for determining the truth in this trial. Had the public redacted version been admitted into evidence – which in any event is not the case – it would have been of little use from that perspective. I consider therefore that an *inter partes* version containing minor redactions would certainly have been useful to the Parties in the preparation of their final briefs or their closing arguments, and it could especially have assisted the Chamber in determining the credibility of witnesses in the ongoing main Case against the Accused Vojislav Šešelj.

Now the Chamber, which has taken note of the whole *Amicus* Report, in addition to being deprived of such assistance, must make an effort not to be influenced by some facts, testimony and documents reported in it. Among this evidence, those that are not already in the file cannot be taken into consideration at all in evaluating the evidence in the main Case.

In the interest of justice, I would prefer greater transparency towards the parties, the same transparency which Judge Antonetti said has been sacrificed for the expeditiousness of the trial: but how much time has passed in vain since the receipt of the Report?<sup>6</sup>

**Done in English and in French, the French version being authoritative.**

/signed/  
Flavia Lattanzi

Done this twenty-eighth day of December 2011  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

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<sup>6</sup> On 5 October 2011, the Registrar filed and communicated to the Chamber, as confidential and *ex parte* for the two Parties, the *Amicus Curiae* Report (see “Confidential *ex parte* Report of *Amicus Curiae* Directed by Decision of 29 June 2010 on Vojislav Šešelj’s Motion for Contempt”, confidential and *ex parte*, 5 October 2011). The Chamber ordered that a redacted version of the *Amicus Curiae* Report be filed as a public document on 28 October 2011, see Decision of 28 October 2011.