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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-R77.2-A

Date: 16 December 2009

Original: English

BEFORE THE APPEALS CHAMBER

Before: Judge Theodor Meron, Presiding
Judge Mehmet Güney
Judge Fausto Pocar
Judge Andréia Vaz
Judge Christoph Flügge

Registrar: John Hocking

Decision of: 16 December 2009

THE PROSECUTOR
v.
VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON PROSECUTION'S MOTIONS FOR ORDER STRIKING
APPELLANT'S NOTICE OF APPEAL AND APPEAL BRIEF AND
CLOSING THE CASE**

Amicus Curiae Prosecutor:
Mr. Bruce A. MacFarlane, Q.C.

The Accused pro se:
Mr. Vojislav Šešelj

Case No.: IT-03-67-R77.2-A

16 December 2009

THE APPEALS CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Appeals Chamber” and “Tribunal”, respectively);

NOTING the “Notice of Appeal Against the Judgement on Allegations of Contempt of 24 July 2009” (“Notice of Appeal”) and the “Appellant’s Brief Against the Judgement on Allegations of Contempt of 24 July 2009” (“Appeal Brief”), filed confidentially by Vojislav Šešelj (“Šešelj”) on 18 August 2009¹ and 6 October 2009² respectively, from the “Judgement on Allegations of Contempt” rendered by Trial Chamber II (“Trial Chamber”) on 24 July 2009 (“Šešelj contempt case” and “Trial Judgement”, respectively),³

NOTING the “Respondent’s Brief”, filed confidentially by the *Amicus Curiae* Prosecutor (“*Amicus* Prosecutor”) on 9 November 2009 (“Response Brief”);

BEING SEIZED of the “Prosecutor’s Motion for Order Striking Notice of Appeal and Closing the Case” and the “Prosecutor’s Motion for Order Striking Appellant’s Brief and Closing the Case”, filed confidentially by the *Amicus* Prosecutor on 5 October 2009 (“First Motion”) and on 30 October 2009 (“Second Motion”) respectively;

NOTING that the *Amicus* Prosecutor submits in the First and Second Motions that the Notice of Appeal and the Appeal Brief do not respect the requirements set out in various practice directions⁴ and in Rule 108 of the Rules of Procedure and Evidence (“Rules”)⁵ and requests the Appeals

¹ The English translation was filed on 25 August 2009.

² The English translation was filed on 28 October 2009.

³ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2, Judgement on Allegations of Contempt, 24 July 2009, confidential. A public edited version of the Trial Judgement was filed on the same day.

⁴ These include the Practice Direction on Formal Requirements for Appeals from Judgement (“Practice Direction on Formal Requirements”), IT/201, 7 March 2002; the Practice Direction on Procedure for the Filing of Written Submissions in Appeal Proceedings Before the International Tribunal (“Practice Direction on Procedure”), IT/155 Rev. 3, 16 September 2005; and the Practice Direction on the Length of Briefs and Motions (“Practice Direction on Length”), IT/184 Rev. 2, 16 September 2005 (collectively, “Practice Directions”).

⁵ Specifically, the alleged defects of the Notice of Appeal include, *inter alia*, not specifying any error of law that invalidates the decision made by the Trial Chamber or any error of fact that has occasioned a miscarriage of justice, First Motion, para. 14; referring to facts that are not on the record of the appeal, First Motion, para. 15; and argumentation, supporting authorities and references that go beyond the appropriate scope of a Notice of Appeal, First Motion, para. 15. With respect to the Appeal Brief, the *Amicus* Prosecutor submits that it is time barred, First Motion, para. 12; Second Motion, para. 22; exceeds the maximum number of words permitted; fails to identify errors of law that invalidate the decision or errors of fact that have occasioned a miscarriage of justice; includes an extensive discussion of issues relating to the trial proceedings in the main Šešelj trial (IT-03-67-T), Second Motion, para. 25; and puts forward evidence that is not on the trial record and is not accompanied by a book of authorities despite referring to authorities other than the Tribunal or the International Criminal Tribunal for Rwanda (“ICTR”), Second Motion para. 25. The *Amicus* Prosecutor also maintains that Šešelj and his drafting team were familiar with the Practice Directions as early as 2003, as demonstrated by letters from the Registrar and a 2007 submission to the Tribunal, and thus that he had no excuse for filing late or exceeding the word limit for briefs, Second Motion, paras 17-21.

Chamber to strike the Notice of Appeal and the Appeal Brief and to declare the case closed or, in the alternative, to order their re-filing;⁶

NOTING that the *Amicus* Prosecutor further submits that there is no need for a public hearing, as the issues raised before the Appeals Chamber are not new and have been addressed in similar cases of contempt;⁷

NOTING “Professor Vojislav Šešelj’s Response to the Motion by the *Amicus Curiae* Prosecutor for Order Striking Notice of Appeal and Closing the Case of 5 October 2009” and “Professor Vojislav Šešelj’s Response to the Prosecutor’s Motion for Order Striking Appellant’s Brief and Closing the Case of 30 October 2009” filed confidentially by Šešelj on 15 October 2009 (“First Response”)⁸ and 4 December 2009 (“Second Response”)⁹ respectively, in which he requests that the Appeals Chamber dismiss the First and Second Motions as “insulting, baseless and wanton”, and impose sanctions on the *Amicus* Prosecutor pursuant to Rule 73(D);¹⁰

NOTING that Šešelj requests that a public hearing be held before the Appeals Chamber as the Appeal Brief raises “exceptionally important issues” concerning the “fundamental rights of a self-represented accused”;¹¹

CONSIDERING that pursuant to Rule 108 of the Rules a notice of appeal shall set forth the grounds of appeal and indicate “the order, decision or ruling challenged with specific reference to the date of its filing, and/or the transcript page, and indicate the substance of the alleged errors and relief sought”;

CONSIDERING that the Appeals Chamber declines to address at this stage of the proceedings the parties’ arguments concerning the validity of Šešelj’s challenge to the jurisdiction of the Tribunal, or the relevance of Šešelj’s arguments in his Appeal Brief;

⁶ First Motion, paras 1, 16-17; Second Motion, paras 1, 28-29. Should the Appeals Chamber order a re-filing of the Notice of Appeal and Appeal Brief, the *Amicus* Prosecutor requests that seven days be given for each re-filing, and that an extension of time for him to respond to the Appeal Brief be granted, Second Motion, para. 29. The *Amicus* Prosecutor also requests a variance of the time-limit and an expansion of the word-limit for his respondent’s brief, should the Appeals Chamber decide to allow the Appeal Brief to stand as is, Second Motion, para. 30.

⁷ Second Motion, para. 27.

⁸ The English translation was filed on 27 October 2009.

⁹ The English translation was filed on 10 December 2009.

¹⁰ First Response, para. 11; *see also* Second Response, para. 4. More specifically, with respect to the Notice of Appeal, Šešelj maintains, *inter alia*, that the first ground of the Notice of Appeal challenges the jurisdiction of the Tribunal as a whole, rather than being limited to contempt cases, First Response, para. 7; that each ground in the Notice of Appeal appropriately relates to errors of law or fact and that the facts he refers to have a direct connection to his case, First Response paras 9-10. Regarding the Appeal Brief, Šešelj contends that he requested variations of the time and word limits for his Appeal Brief, Second Response, para. 2; Appeal Brief, para. 2; that he was not aware of potential time and word limits and thus that these do not apply, and furthermore that exceptional circumstances warrant an extension of the word limit, First Response, para. 3; Second Response paras 1-3; and that his trial proceedings are linked to the contempt proceedings, Second Response, para. 3. No reply was filed to either the First or Second Response.

¹¹ Second Response, para. 3, referring to the Second Motion, para. 27; Appeal Brief, para. 2.

CONSIDERING that the Notice of Appeal contains arguments and supporting authorities that go beyond the appropriate scope, and fails to specify a type of alleged error under the first ground of appeal;

FINDING that the Notice of Appeal does not conform to the requirements set out in Rule 108 of the Rules and Paragraph 1 of the Practice Direction on Formal Requirements,¹² and that it is necessary for Šešelj to re-file his Notice of Appeal in conformity with these requirements;

FINDING that in general, the Appeal Brief is in conformity with the requirements of Paragraph 4 of the Practice Direction on Formal Requirements;¹³

CONSIDERING however that the Appeal Brief unjustifiably exceeds by 20,979 words¹⁴ the limit of 9000 words set out in Paragraph (C)(2) of the Practice Direction on Length¹⁵ without demonstrating any exceptional circumstances warranting more than tripling the word limit,¹⁶ and that the Appeal Brief is not accompanied by a book of authorities as required under Paragraph 7 of the Practice Direction on Formal Requirements where authorities other than those of the Tribunal or the ICTR are relied upon;

CONSIDERING that while Šešelj's Appeal Brief was filed out of time,¹⁷ it is unclear whether Šešelj himself had access to the B/C/S translation of the latest version of the Practice Direction on Procedure setting out the time and word limits for filings in appeal proceedings under Rule 77 of the Rules before he met a representative of the Registry on 11 September 2009;¹⁸

¹² It is established in the jurisprudence of the Tribunal that the proper place for detailed arguments in support of each ground of appeal and supporting authorities is an appellant's brief. See *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, para. 14; *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution's Motion for an Order Striking Defence Notice of Appeal and Requiring Refiling, 3 October 2006, p. 4.

¹³ See also Practice Direction on Procedure, para. 5.

¹⁴ See Appeal Brief, p. 93.

¹⁵ See Practice Direction on Procedure, para. 8, providing that Paragraph (C)(2) of the Practice Direction on Length applies to filings under Rule 77 of the Rules.

¹⁶ See Practice Direction on Length, para. 7.

¹⁷ Section III of the Practice Direction on Procedure including Paragraphs 4 and 5 applies to final decisions of a Trial Chamber under Rule 77. See *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2-A, Judgement, 27 September 2006 ("*Marijačić and Rebić Judgement*"), para. 14. Pursuant to Paragraph 5 of the Practice Direction on Procedure, the Appeal Brief was due on 2 September 2009. However, it was filed on 5 October 2009.

¹⁸ While the latest version of the Practice Direction on Procedure (IT/155 Rev. 3 dated 16 September 2005) encompasses the provisions governing the appeal proceedings under Rule 77 of the Rules, the previous versions of the Practice Direction on Procedure (IT/155 Rev. 1 dated 7 March 2002 and IT/155 Rev. 2 dated 21 February 2005) did not contain such provisions. The Registrar's letters of 2003 referred to by the *Amicus* Prosecutor (*Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Letter from John Hocking, Senior Legal Officer, Appeals Chamber, to Dr. Šešelj regarding "Submission No. 7", 22 April 2003; Letter from John Hocking, Senior Legal Officer, Appeals Chamber, to Dr. Šešelj regarding "Submission No. 14", 27 June 2003; Letter from John Hocking, Senior Legal Officer, Appeals Chamber, to Dr. Šešelj regarding "Motion No. 18", 12 September 2003) reminded Šešelj of the previous version of the Practice Direction on Procedure (IT/155 Rev. 1). Therefore, they do not prove that Šešelj and his associates were aware of the time-limits of the filings in the appeal proceedings under Rule 77 of the Rules as early as 2003. The *Amicus* Prosecutor also contends that one of the Šešelj's submissions (*Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT,

FINDING that, in the circumstances of this case, especially given that Šešelj is self-represented, it is in the interests of justice to allow Šešelj to re-file his Appeal Brief in conformity with the above mentioned requirements;

FINDING that it is in the interests of justice to allow the *Amicus* Prosecutor to re-file his Response Brief in light of Šešelj's re-filed Notice of Appeal and Appeal Brief within the time-limit as set out under Paragraph 6 of the Practice Direction on Procedure;

REMINDING Šešelj that in order to present the evidence which is not included in the trial record of the Šešelj contempt case, he must file a motion seeking leave to do so pursuant to Rule 115 of the Rules;¹⁹

CONSIDERING that although the First and Second Motions and the First and Second Responses were filed confidentially, it is appropriate to render the present decision publicly as it does not contain any information that needs to be withheld from the public;

FINDING that Šešelj's argument in favour of an oral hearing is not persuasive and that such a hearing is unnecessary;²⁰

FOR THE FOREGOING REASONS

GRANTS in part the First and Second Motions;

ORDERS Šešelj to re-file a notice of appeal within seven days of the filing of this decision, as directed above in accordance with the requirements set out in the relevant provisions of the Rules and the Practice Directions;

ORDERS Šešelj to re-file an appellant's brief not exceeding 9,000 words within 15 days of the filing of his notice of appeal, as directed above in accordance with the requirements set out in the relevant provisions of the Rules and the Practice Directions;

ORDERS the *Amicus* Prosecutor to re-file a respondent's brief not exceeding 9,000 words within 10 days of the filing of the appellant's brief, in accordance with the requirements set out in the relevant provisions of the Rules and the Practice Directions;

Professor Vojislav Šešelj's Reply to the Submission of the Deputy Registrar on the Appeal by Professor Vojislav Šešelj Against the Registry Decision of 16 January 2007, 12 March 2007 (English translation filed on 20 April 2007) ("Submission 280"), p. 2) refers to the most recent version of the Practice Direction on Procedure. However, due to its imprecise wording, it is not entirely clear whether Submission 280 refers to the latest version of the Practice Direction on Procedure or to the latest version of the Practice Direction on Length which is also dated 16 September 2005.

¹⁹ See also Practice Direction on Formal Requirements, para. 11.

²⁰ See Rule 116 bis(A) of the Rules. Cf. *Marijačić and Rebić* Judgement, para. 10; *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Judgement, 23 July 2009, para. 13.

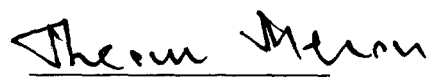
ORDERS Šešelj to file a brief in reply, if any, not exceeding 3,000 words within four days of the filing of the respondent's brief, in accordance with the requirements set out in the relevant provisions of the Rules and the Practice Directions;

DECIDES that Šešelj's appeal will be determined entirely on the basis of written briefs; and

DISMISSES the First and Second Motions in all other respects.

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

Dated this sixteenth day of December 2009,
At The Hague
The Netherlands


Judge Theodor Meron
Presiding

[Seal of the Tribunal]