



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-03-67-PT
Date: 15 December 2004
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Jean Claude Antonetti
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision of: 15 December 2004

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON THE ACCUSED'S REQUESTS FOR AN
ADVISORY OPINION OF THE INTERNATIONAL COURT OF
JUSTICE**

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff
Mr. Ulrich Mussemeyer
Mr. Daniel Saxon

The Accused:

Mr. Vojislav Šešelj

Standby counsel:

Mr. Tjarda Eduard van der Spoel

TRIAL CHAMBER II (“Trial 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 (“Tribunal”);

BEING SEISED OF the “Request by the Defendant for Seeking Advisory Opinion of the International Court of Justice on the Legality of the Establishment of the International Criminal Tribunal for the Former Yugoslavia” (“First Request”) and of the “Request by the Accused for Trial Chamber II to Seek Through the Security Council or the General Assembly an Advisory Opinion from the International Court of Justice on the Legality of the Establishment of the International Criminal Tribunal for the Former Yugoslavia on the Basis of UN Security Council Resolutions No.827 and 808” (“Second Request”) (collectively: “Requests”), filed by the Accused Vojislav Šešelj (“Accused”) on 9 November 2004 and 19 November 2004 respectively, wherein the Accused challenges the lawfulness of the establishment of the Tribunal on the grounds that the Security Council lacked the power to establish it, and requests the Trial Chamber to seek, through the Security Council or the General Assembly of the United Nations, an advisory opinion of the International Court of Justice on the lawfulness of the establishment of the Tribunal;¹

NOTING the “Prosecution’s Response to the Accused’s Request for an Advisory Opinion of the International Court of Justice” (“First Response”) and the “Prosecution’s Response to the Accused’s Second Request for an Advisory Opinion of the International Court of Justice on the Legality of the Establishment of the ICTY” (“Second Response”) (collectively: “Responses”), filed by the Office of the Prosecutor (“Prosecution”) on 19 November 2004 and 25 November 2004 respectively, wherein the Prosecution submits that the Requests are repetitive, amount to frivolous pleading by the Accused and should be dismissed²;

CONSIDERING that the Statute of the Tribunal does not foresee recourse to the International Court of Justice;³

CONSIDERING that in the *Tadić* Jurisdiction Decision, the Appeals Chamber determined that the jurisdiction of a judicial body to determine its own jurisdiction “is a necessary component of the exercise of the judicial function”;⁴

CONSIDERING therefore that recourse to the International Court of Justice is not necessary;⁵

¹ First Request, pages 6 and 10; Second Request, pages 9 and 11.

² First Response, para. 3; Second Response, para. 3.

³ Statute of the International Criminal Tribunal for the Former Yugoslavia, adopted 25 May 1993 by S/RES 827 (1993) and last amended by S/RES 1411 (2002).

⁴ *Prosecutor v. Tadić*, Case IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Jurisdiction Decision”), para. 18.

CONSIDERING that the Appeals Chamber has already ruled upon the lawfulness of the establishment of the Tribunal by the Security Council in the *Tadić* Jurisdiction Decision;⁶

CONSIDERING further that the *ratio decidendi* of the decisions of the Appeals Chamber is binding upon the Trial Chambers;⁷

NOTING that the Accused had already previously challenged the lawfulness of the establishment of the Tribunal by the Security Council on exactly the same grounds;⁸

REITERATING the Trial Chamber's previous ruling that

[...]the objections raised by the Accused have already been addressed in previous decisions of the Tribunal and in particular by the Appeals Chamber in the *Tadić* Jurisdiction Decision. Even if the Accused's objections might have fallen within the scope of Rule 72, they would be dismissed in view of the established case law of the Tribunal. The Trial Chamber does not see any reason to further discuss this part of the Motion.⁹

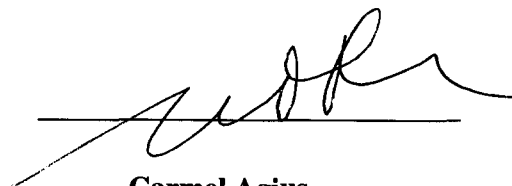
FOR THE FOREGOING REASONS

PURSUANT TO Rules 54 of the Rules of Procedure and Evidence, **HEREBY REJECTS** the Requests.

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

Dated this fifteenth day of December 2004,

At The Hague, The Netherlands



Carmel Agius

Presiding Judge

[Seal of the Tribunal]

⁵ See also *Prosecutor v Milošević*, Case IT-99-37-PT, Decision on Preliminary Motions, 8 November 2001, paras 16-17.

⁶ *Tadić* Jurisdiction Decision, paras 26-48.

⁷ See *Prosecutor v Aleksovski*, Case IT-95-14/1-A, Judgement, 24 March 2000, para. 113.

⁸ "Objection to the Indictment", 24 December 2003.

⁹ Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of Indictment, 26 May 2004, para. 12.