



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: 21 April 2005
Original: English

IN TRIAL CHAMBER II

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

Registrar: Mr. Hans Holthuis

Decision of: 21 April 2005

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON THE ACCUSED'S REQUESTS FOR A RULING
OF THE INTERNATIONAL COURT OF JUSTICE
CONCERNING THE TRIBUNAL'S JURISDICTION OVER
NATIONALS OF THE FEDERAL REPUBLIC OF
YUGOSLAVIA
(Submission Number 75)**

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 “Motion by the Accused for Trial Chamber II to Request the International Court of Justice to Rule Whether the International Criminal Tribunal for the Former Yugoslavia may try Nationals of the Federal Republic of Yugoslavia for Alleged War Crimes Committed at a Time When the Federal Republic of Yugoslavia was not a Member of the United Nations”¹ (“Motion”), filed by Vojislav Šešelj (“Accused”) on 21 February 2005. In his motion, the Accused challenges the Tribunal’s jurisdiction *ratione personae* concerning nationals of the former Federal Republic of Yugoslavia (now Serbia and Montenegro) on the grounds that the International Court of Justice, in eight substantively identical judgements issued on 15 December 2004,² has stated that the Federal Republic of Yugoslavia was not a member of the United Nations when it came into existence on 27 April 1992 until it was granted membership in the United Nations on 1 November 2000.³ He further 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 question whether the Tribunal may try nationals of the Federal Republic of Yugoslavia (now Serbia and Montenegro) for alleged war crimes committed in the territory of the former Yugoslavia when the Federal Republic of Yugoslavia was not a member of the United Nations;⁴

NOTING the “Prosecution’s Response to ‘Motion by the Accused for Trial Chamber II to Request the International Court of Justice to Rule Whether the International Criminal Tribunal for the Former Yugoslavia may try Nationals of the Federal Republic of Yugoslavia for Alleged War Crimes Committed at a Time When the Federal Republic of Yugoslavia was not a Member of the United Nations’” (“Response”), filed by the Office of the Prosecutor (“Prosecution”) on 11 March 2005, wherein the Prosecution submits that the Tribunal’s Statute does not foresee recourse to the International Court of Justice and that the Tribunal is competent to determine all matters concerning its own jurisdiction raised by the Motion; moreover, that the International Court of Justice

¹ Submission no. 75.

² Case Concerning Legality of Use of Force (Serbia and Montenegro v. Belgium), Preliminary Objections, Judgement, 15 December 2004; Case Concerning Legality of Use of Force (Serbia and Montenegro v. Canada), Preliminary Objections, Judgement, 15 December 2004; Case Concerning Legality of Use of Force (Serbia and Montenegro v. France), Preliminary Objections, Judgement, 15 December 2004; Case Concerning Legality of Use of Force (Serbia and Montenegro v. Germany), Preliminary Objections, Judgement, 15 December 2004; Case Concerning Legality of Use of Force (Serbia and Montenegro v. Italy), Preliminary Objections, Judgement, 15 December 2004; Case Concerning Legality of Use of Force (Serbia and Montenegro v. Netherlands), Preliminary Objections, Judgement, 15 December 2004; Case Concerning Legality of Use of Force (Serbia and Montenegro v. Portugal), Preliminary Objections, Judgement, 15 December 2004; Case Concerning Legality of Use of Force (Serbia and Montenegro v. United Kingdom), Preliminary Objections, Judgement, 15 December 2004.

³ See, e.g., Case Concerning Legality of Use of Force (Serbia and Montenegro v. Belgium), Preliminary Objections, Judgement, 15 December 2004, paras 55-60, 76, 91.

⁴ Motion, p. 10.

judgements of 15 December 2004 have no bearing upon the Tribunal's jurisdiction *ratione personae*, as it extends to all natural persons regardless of their nationality at any given time, and that the Motion should be dismissed accordingly;⁵

NOTING that the issue raised in the Motion is a challenge to the Tribunal's jurisdiction *ratione personae*;

NOTING that the Statute of the Tribunal ("Statute")⁶ does not foresee recourse to the International Court of Justice,⁷ and that in the *Tadić* Jurisdiction Decision, the Appeals Chamber of the Tribunal determined that the jurisdiction of a judicial body to determine its own jurisdiction "is a necessary component of the exercise of the judicial function",⁸

CONSIDERING Article 1 of the Statute, which provides that "[t]he International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991" and therefore, the Tribunal's jurisdiction *ratione loci* comprises the entirety of the former Yugoslavia, and therefore the territory on which the crimes the Accused is charged with are alleged to have been committed;

CONSIDERING that it has not been shown that the judgements of the International Court of Justice issued on 15 December 2004 relied on by the Accused provide any basis for questioning the lawfulness of the jurisdiction of this Tribunal to try the Accused;

FINDING that in the light of Article 6 of the Statute, which reads "[t]he International Tribunal shall have jurisdiction over natural persons pursuant to the provisions of the present Statute", the Tribunal's jurisdiction *ratione personae* is not limited to nationals of a certain State, irrespective of membership of that State in the United Nations;

⁵ Response, para. 19.

⁶ 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 1481 (2003).

⁷ Decision on the Accused's Requests for an Advisory Opinion of the International Court of Justice, 15 December 2004, p. 2.

⁸ *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.

FOR THE FOREGOING REASONS

PURSUANT TO Rule 54 of the Rules of Procedure and Evidence

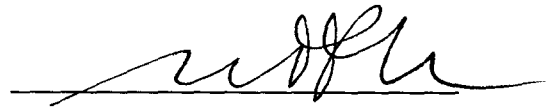
HEREBY REJECTS the Motion.

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

Dated this twenty-first day of April 2005,

At The Hague

The Netherlands



Carmel Agius
Presiding Judge

[Seal of the Tribunal]