

IT-03-67-R77.2
D265 - D263
27 APRIL 2009

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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

Date: 27 April 2009

Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Presiding
Judge Iain Bonomy
Judge Kevin Parker

Acting Registrar: Mr. John Hocking

Decision: 27 April 2009

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON *AMICUS CURIAE* PROSECUTOR'S MOTION
SEEKING AN ORDER TO LIFT *EX PARTE* STATUS**

The *Amicus Curiae* Prosecutor:
Mr. Bruce MacFarlane, Q.C.

The Accused:
Mr. Vojislav Šešelj

TRIAL CHAMBER II (“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 “Prosecutor’s Motion Seeking an Order to Lift *Ex Parte* Status” filed confidentially on 27 March 2009 (“Motion”), in which the *amicus curiae* prosecutor (“Amicus Prosecutor”) requests, in order to comply with his disclosure obligations to Vojislav Šešelj (“Accused”) under Rule 66 of the Rules of Procedure and Evidence of the Tribunal (“Rules”), that the Chamber lift the *ex parte* status of i) the “Prosecution’s Motion under Rule 77 Concerning the Breach of Protective Measures”, and its annex, dated 10 October 2008 (“Rule 77 Motion”), and ii) the annex to the Decision on Prosecution’s Third and Fourth Motion for Protective Measures for Witnesses During the Pre-Trial Phase, dated 27 May 2005 (“27 May 2005 Annex”);¹

NOTING the Accused did not respond to the Motion;

NOTING that Rule 66(i) requires that the Prosecution make available to the defence in the language which the accused understands copies of the supporting material accompanying the indictment within 30 days of the initial appearance of the accused, and that Rule 77(E) of the Rules provides that the Rules shall apply *mutatis mutandis* to contempt proceedings;

NOTING that on 21 January 2009, the Chamber issued an order in lieu of indictment against the Accused, charging him with one count of contempt of the Tribunal for “knowingly and wilfully interfering with the administration of justice by disclosing confidential information in violation of orders granting protective measures”² in a book authored by him (“Indictment”);

NOTING the *Amicus* Prosecutor’s submission that the material contained in the annex to the Rule 77 Motion (“Rule 77 Annex”) constitutes the “confirming material” to the Indictment;³

NOTING that in the 21 January 2009 Decision, the Trial Chamber considered that the issuance of the Indictment was warranted based on parts of the material provided in the Rule 77 Annex;⁴

CONSIDERING therefore that the *ex parte* status of the Rule 77 Annex may be lifted only to the extent necessary to disclose to the Accused the material supporting the charge in the Indictment;⁵

¹ Motion, para. 6, referring to *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, Decision on Prosecution’s Third and Fourth Motion for Protective Measures for Witnesses During the Pre-Trial Phase with Confidential and *Ex Parte* Annex, 1 June 2005 (dated 27 May 2005).

² Decision on Allegations of Contempt, public version, 21 January 2009 (“21 January 2009 Decision”), p. 8.

³ Motion, para. 6.

⁴ See 21 January 2009 Decision, para. 12. In this regard, the Chamber notes that the documents under tabs 4 to 9 of the Rule 77 Annex are unrelated to the charge of contempt contained in the Indictment.

CONSIDERING further that the 21 January 2009 Decision and the appended Indictment provide the Accused with a detailed analysis of the charge against him and that it is therefore not necessary to lift the *ex parte* status of the Rule 77 Motion itself;

CONSIDERING, in relation to the 27 May 2005 Annex, that the *Amicus* Prosecutor fails to explain in the Motion why it should be disclosed to the Accused;

FOR THE FOREGOING REASONS


PURSUANT TO Rule 66(A)(i) of the Rules,

HEREBY DENIES the *Amicus* Prosecutor's request to lift the *ex parte* status of the Rule 77 Motion;

GRANTS in part the *Amicus* Prosecutor's request to lift the *ex parte* status of the Rule 77 Annex and **ORDERS** that the Registry lift the *ex parte* status of the documents contained in Tabs 1, 2, 3, 9, 10 and "n/a" of the Rule 77 Annex;

ORDERS the *Amicus* Prosecutor to substantiate his request to lift the *ex parte* status of the 27 May 2005 Annex no later than 28 April 2009.

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



Judge O-Gon Kwon
Presiding

Dated this twenty-seventh day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵ These are the documents under Tabs 1, 2, 3, 9, 10 and "n/a" (the latter referencing the book authored by the Accused and placed on a cd appended to the Rule 77 Motion).