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: 1 July 2009
		Original: English

IN TRIAL CHAMBER II

Before:

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

Registrar:

Mr. John Hocking

Order:

1 July 2009

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

DECISION ON OFFICE OF THE PROSECUTOR'S MOTION
SEEKING ACCESS TO TRIAL RECORD

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

Office of the Prosecutor
Mr. Daryl Mundis
Ms. Christine Dahl

The Accused:
Mr. Vojislav Šešelj

THIS 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 "Prosecution Motion Seeking Access to Trial Record" filed confidentially and *ex parte* by the Office of the Prosecutor in the case IT-03-67-T ("*Šešelj* Prosecution" and "*Šešelj* case", respectively) on 17 June 2009 ("Motion"), in which the *Šešelj* Prosecution seeks access to the entire trial record in the present case, including the full transcripts (public, private and closed sessions) of all hearings and all public and confidential exhibits ("Requested Material")[1];

NOTING the *Šešelj* Prosecution submits that there exists a clear nexus between the present case and the *Šešelj* case;[2]

NOTING Rule 79(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules") pursuant to which a Chamber "may order that the press and the public be excluded from all or part of the proceedings for reasons of: (i) public order or morality; (ii) safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or (iii) the protection of the interests of justice";

NOTING Rule 75(G) of the Rules provides that a "party to the second proceedings seeking to rescind, vary, or augment protective measures ordered in the first proceedings must apply: (i) to any Chamber, however constituted, remaining seised of the first proceedings";

CONSIDERING that a party is entitled to seek material from any source, including from another case before this Tribunal, to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown, and that access to confidential material from another case may be granted wherever the Chamber is satisfied that the party seeking access has established that such material may be of material assistance to its case;[3]

CONSIDERING that the present case concerns allegations that Vojislav Šešelj "knowingly violated orders granting protective measures in respect of three witnesses in his trial by publishing

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[1] Motion, para. 6.

[2] Motion, para. 4.

[3] *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Veselin Šljivančanin's Motion Seeking Access to Confidential Material in the *Kordić and Čerkez* Case, 22 April 2008, para. 7.

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information enabling the identification of these witnesses in a book he authored"[4] and that the Requested Material may be of assistance to the *Šešelj* Prosecution's case;

CONSIDERING that, while the Motion was filed confidentially and *ex parte* by the Prosecution, the Chamber sees no reason not to issue the present decision publicly;

PURSUANT TO Rules 54 and 75(G)

HEREBY GRANTS the Motion and **ORDERS** that the *Šešelj* Prosecution be provided with the Requested Material as soon as practicable.

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

Judge O-Gon Kwon
Presiding

Dated this first day of July 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

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[4] Decision on Allegations of Contempt, 21 January 2009, para. 3.

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