



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-R77.3
Date: 10 December
2010
Original: English

IN TRIAL CHAMBER II

Before: Judge O-Gon Kwon, Presiding
Judge Kevin Parker
Judge Burton Hall

Registrar: Mr. John Hocking

Decision: 10 December 2010

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON ACCUSED'S REQUEST FOR ACCESS TO
ADDITIONAL DOCUMENTS**

Amicus Curiae Prosecutor:

Mr. Bruce MacFarlane, Q.C.

The Accused:

Mr. Vojislav Šešelj

THIS TRIAL CHAMBER (“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”) is seised of the oral request made by Vojislav Šešelj (“Accused”) during the initial appearance held on 29 April 2010, wherein he seeks access, prior to entering into a plea, to the documents that were disclosed to the *Amicus Curiae* Prosecutor in these proceedings (“Motion” and “*Amicus*”, respectively).¹ For ease of reference, the Chamber shall recall below the circumstances surrounding the Motion.

1. On 3 February 2010, the Chamber issued a “Second Decision on Prosecution’s Motion under Rule 77 Concerning Further Breaches of Protective Measures (Three Books)” (“3 February Decision”) wherein it directed the Registrar of the Tribunal (“Registrar”) to appoint the *Amicus* to prosecute the charge set out in the attached order in lieu of indictment (“Indictment”) and to make available to the *Amicus* a number of documents.²

2. During the initial appearance held on 29 April 2010, the Accused stated that he would not enter a plea before receiving the documents provided to the *Amicus* pursuant to the 3 February Decision.³ These documents are i) the Prosecution’s Motion under Rule 77 Concerning Further Breaches of Protective Measures dated 26 January 2009 (“26 January Motion”); ii) the Prosecution’s Notice of Appeal dated 7 September 2009 (“Notice of Appeal”); iii) the Prosecution’s Appeal Brief dated 22 September 2009 (“Appeal Brief”); iv) the Corrigendum to Prosecution’s Appeal Brief dated 23 September 2009 (“Corrigendum to Appeal Brief”); v) the Decision on the Prosecution’s Appeal against the Trial Chamber’s Decision of 21 August 2009 dated 17 December 2009 (“Appeal Decision”); and vi) copies of all material referred to therein (together “Requested Material”). The Accused submits that the principle of equality of arms requires that he be provided with these materials “which are essential because for [him] to understand the nature of the crime [he is] being accused of”.⁴

3. On 4 May 2010, the *Amicus* filed a “Prosecutor’s Response to Oral Motion for Access to Additional Documents” (“*Amicus* Response”), in which he argues that the 26 January Motion, the Notice of Appeal, the Appeal Brief, the Corrigendum to Appeal Brief and the Appeal Decision are not supporting material to be disclosed pursuant to Rule 66(A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”). The *Amicus* further submits that the 26 January Motion is not

¹ Initial Appearance, T. 5 (29 April 2010).

² Public Redacted Version of Second Decision on Prosecution’s Motion under Rule 77 Concerning Further Braches of Protective Measures (Three Books) Issued on 3 February 2010, para. 20(e).

³ Initial Appearance, T. 5 (29 April 2010).

⁴ Initial Appearance, T. 5, 7 (29 April 2010).

entirely relevant to the charge before this Chamber.⁵ The *Amicus* argues that should the Chamber consider that the Requested Material fall within the scope of the *Amicus Curiae*'s disclosure obligations, that the Office of the Prosecutor should be invited to respond pursuant to Rule 66 (C) or Rule 68 (iv) of the Rules.⁶

4. During the further initial appearance held on 6 May 2010, the Chamber already considered that the Accused had all the necessary material in his possession to enter a plea.⁷ On the general question of disclosure of documents pursuant to Rule 66(A)(i), the Accused was granted leave to reply and replied orally during the further initial appearance ("Reply").⁸ The Accused reiterated that the Requested Material was important for the preparation of his defence.⁹

5. The Chamber recalls that while Rule 66(A)(i) requires that the Prosecution make available to the defence in a language which the accused understands copies of the supporting material accompanying the indictment within 30 days of the initial appearance of the accused, Rule 77(E) of the Rules provides that, in contempt matters, such disclosure be made within ten days. "Supporting material" has been interpreted in the jurisprudence to cover "the material upon which the charges are based and does not include other material that may be submitted to the confirming Judge, such as brief of argument or statement of facts".¹⁰

6. On a preliminary note, the Chamber wishes to emphasise that the *Amicus* filed the *Amicus* Response in due time and well within the ten day deadline set forth by Rule 77(E). As indicated during the further initial appearance, the Chamber could not advance further with the proceedings, including with ruling on the Motion, pending delivery of the "Decision on Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker" of 19 November 2010.¹¹

7. The Chamber has carefully assessed whether the Requested Material is covered by Rule 66(A)(i) of the Rules and has simultaneously reviewed the list of documents that the *Amicus* has already disclosed to the Accused.¹² The Chamber considers that beyond what has already been disclosed to the Accused, only a few pages of Annex G to the 26 January Motion need to be disclosed to the Accused pursuant to Rule 66(A)(i) as supporting material to the Indictment. The

⁵ *Amicus* Response, paras. 16-17.

⁶ *Amicus* Response, para. 18.

⁷ Further Initial Appearance, T. 19 (6 May 2010).

⁸ Further Initial Appearance, T. 22-24 (6 May 2010).

⁹ Further Initial Appearance, T. 22-24 (6 May 2010).

¹⁰ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-PT, Order on Motion to Compel Compliance by the Prosecutor with Rules 66(A) and 68, 26 February 1999, p. 3.

¹¹ Further Initial Appearance, T. 25 (6 May 2010).

¹² Motion, Appendix A.

remainder of the Requested Material does not qualify as supporting material, as the Chamber did not rely on it as the basis for the charge in the Indictment or because it is irrelevant to the present Indictment.

8. With regard to the passages of Annex G to the 26 January Motion that the Chamber would consider to be supporting material to the Indictment, the Chamber notes that pages 320 to 545 reproduce the book which is the subject of the charge in the Indictment. The *Amicus* in the *Amicus* Response indicates that he disclosed the book to the Accused on 29 April 2010,¹³ but also requests that the *ex parte* status of pages 320 to 330 be lifted “in order to complete his disclosure obligations pursuant to Rule 66(A)(i) of the Rules”¹⁴. The Chamber considers that since the book has already been disclosed to the Accused, it is not necessary to duplicate the disclosure by lifting the *ex parte* status of pages 320 to 330 of Annex G to the 26 January Motion.

9. For the foregoing reasons, the Chamber hereby **GRANTS** the Motion in part and **ORDERS** that the Accused be provided with copies of pages 308 to 319 of Annex G to the 26 January Motion.

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



Judge O-Gon Kwon
Presiding Judge

Dated this tenth day of December 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

¹³ *Amicus* Response, confidential Appendix A, Receipt 3, p. 2.
¹⁴ *Amicus* Response, para. 15.