

**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-R77.3
Date: 31 October 2011
Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding
Judge Burton Hall
Judge Howard Morrison

Registrar: Mr. John Hocking

Judgement of: 31 October 2011

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**PUBLIC REDACTED VERSION OF "JUDGEMENT" ISSUED
ON 31 OCTOBER 2011**

Amicus Curiae Prosecutor:

Mr. Bruce MacFarlane, Q.C.

The Accused:

Mr. Vojislav Šešelj

OK

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I. PROCEDURAL HISTORY

A. The Indictment

1. On 26 January 2009, the Office of the Prosecutor (“Prosecution”) filed, confidentially and *ex parte*, the “Prosecution’s Motion under Rule 77 Concerning Further Breaches of Protective Measures” (“26 January Motion”), in which it submitted that Vojislav Šešelj (“Accused”) had knowingly violated orders of the Trial Chamber hearing the case of *Prosecutor v. Vojislav Šešelj* (“Šešelj Trial Chamber” and “Šešelj case”, respectively) by disclosing eight confidential submissions in three books allegedly authored by him: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED] (“Book”).¹ In relation to the Book, the Prosecution further alleged that the Accused had knowingly violated decisions of the Šešelj Trial Chamber by publishing the statements of 13 protected witnesses, which included information enabling their identification.² The Prosecution asserted that these circumstances presented a *prima facie* case of contempt against the Accused and justified the issuance of an order in lieu of an indictment pursuant to Rule 77(D)(ii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”).³ On 13 March 2009, the President of the Tribunal assigned the 26 January Motion to this Chamber.⁴

2. On 21 August 2009, the Chamber issued, confidentially and *ex parte*, the “Decision on Prosecution’s Motion under Rule 77 Concerning Further Breaches of Protective Measures (Three Books)”, finding, *inter alia*, that: (i) although there were sufficient grounds to believe that the publication of submissions in the Book disclosed information in knowing violation of an order of a Chamber, it was not persuaded that such disclosure attained such a level of gravity that the Chamber should exercise its discretion to instigate proceedings pursuant to Rule 77(D); and (ii) it did not have sufficient grounds to believe that the information contained in the Book which was alleged to enable the identification of the 13 protected witnesses could in fact lead to the identification of protected Prosecution witnesses as such.

3. On 7 September 2009, pursuant to Rule 77(J), the Prosecution filed the confidential *ex parte* “Notice of Appeal” in relation to 11 of the 13 protected witnesses originally alleged to be identified

¹ 26 January Motion, paras 1–2. The Chamber notes that the books entitled [REDACTED] and [REDACTED] are not the subject of these proceedings.

² *Id.*, paras 21–22.

³ *Id.*, para. 4.

⁴ The 26 January Motion was originally filed before the Šešelj Trial Chamber. On 29 January 2009, in its confidential *ex parte* “Order Referring a Motion”, the Šešelj Trial Chamber determined that it was not properly seised of the 26 January Motion and referred it to the President of the Tribunal. The President of the Tribunal then referred the 26 January Motion to Trial Chamber II. *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Order Assigning Motions to a Trial Chamber, 13 March 2009, confidential and *ex parte*.

in the Book.⁵ The “Prosecution’s Appeal Brief”, which was filed on 22 September 2009, and the “Corrigendum to Prosecution’s Appeal Brief”, which was filed the following day, ensued.

4. On 17 December 2009, the Appeals Chamber of the Tribunal (“Appeals Chamber”) issued the Appeal Decision wherein it found that the evidence before the Chamber did give rise to a *prima facie* case that the Accused knowingly disclosed the identifying information of the 11 protected witnesses in violation of the Šešelj Trial Chamber’s orders, and therefore that no reasonable trier of fact could have concluded that insufficient grounds existed to prosecute the Accused pursuant to Rule 77(D) of the Rules.⁶ More specifically, the Appeals Chamber held that the fact that the statements included in the Book did not identify the individuals as Prosecution witnesses was not dispositive of whether Šešelj had violated the orders of the Šešelj Trial Chamber.⁷ Consequently, the Appeals Chamber ordered this Chamber to proceed against the Accused by issuing an order in lieu of indictment pursuant to Rule 77(D)(ii) of the Rules for having disclosed information in the Book which might identify 11 protected witnesses in violation of the orders of the Šešelj Trial Chamber.⁸

5. On 3 February 2010, the Chamber thus issued an order in lieu of an indictment (“Indictment”) which charged the Accused with one count of contempt of the Tribunal, punishable under Rule 77(A)(ii) of the Rules, for having disclosed information which may identify the 11 protected witnesses (“Witnesses”) in violation of orders of a Chamber in the Book, and directed the Registrar to appoint an *Amicus Curiae* Prosecutor to prosecute the case.

B. The Trial Proceedings

6. On 2 March 2010, the Registrar appointed Bruce MacFarlane, Q.C. as *Amicus Curiae* Prosecutor in this case (“*Amicus* Prosecutor”).

7. On 27 April 2010, prior to his initial appearance scheduled for 29 April, the Accused filed the “Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and

⁵ The 11 protected witnesses included in the Prosecution appeal were: [REDACTED]. Decision on the Prosecution’s Appeal against the Trial Chamber’s Decision of 21 August 2009, 17 December 2009, confidential and *ex parte*, (“Appeal Decision”), fn. 24.

⁶ *Id.*, para. 27.

⁷ *Id.*, paras 20–21.

⁸ *Id.*, para. 28; *see also id.*, para. 27; *see also* Order Assigning Judges to a Case Before a Trial Chamber and Replacing a Judge issued confidentially and *ex parte* by the President of the Tribunal on 18 December 2009, p. 3 (ordering that the Bench in this matter shall be composed of Judges O-Gon Kwon, Kevin Parker and Burton Hall).

Kevin Parker” (“Disqualification Motion”).⁹ The Disqualification Motion was dismissed on 19 November 2010 by a special bench composed upon the order of the President.¹⁰

8. At the initial appearance of the Accused conducted by Judge Hall on 29 April 2010, the Accused chose to represent himself for the purpose of the hearing and the remainder of the proceedings, and declined to plead to the charge in the Indictment.¹¹ At the further initial appearance of the Accused on 6 May 2010, the Accused refused to enter a plea and thus a plea of not guilty was entered on his behalf pursuant to Rule 62(A)(iv).¹²

9. On 17 December 2010, the Vice-President issued an order as Acting President, appointing Judge Howard Morrison to replace Judge Kevin Parker in order to meet the trial management and case distribution needs of the Tribunal.¹³

10. A pre-trial conference was held on 22 February 2011 to deal with pending procedural matters, and the trial began on the same day immediately thereafter. No witnesses were called by the *Amicus* Prosecutor, who tendered into evidence 72 exhibits, out of which 54 were admitted under seal. At the close of the *Amicus* Prosecutor’s case, the Chamber granted the Accused’s request to postpone the start of his case to enable him to prepare his defence and to address the issue of financing his defence team.¹⁴

11. From 6 to 8 June 2011, the Accused called five witnesses,¹⁵ and tendered four documents into evidence.¹⁶ On 7 June 2011, during the cross examination of Zoran Dražilović, the *Amicus* Prosecutor tendered one document, which was admitted publicly.¹⁷

⁹ This Motion was filed confidentially upon order of the Chamber. Order Regarding the Filing of a Motion, 27 April 2010.

¹⁰ Decision on Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker, 22 June 2010, para. 33 (made public on 23 November 2010); Decision on Motion by Professor Vojislav Šešelj for the Disqualification of Judges O-Gon Kwon and Kevin Parker, 19 November 2010, confidential, para. 45.

¹¹ T. 11 (29 April 2010); *see also* T. 10 (29 April 2010) (on the issue of entering a plea).

¹² T. 21, 25 (6 May 2010).

¹³ Order Replacing Judge, 17 December 2010.

¹⁴ T. 133–134 (22 February 2011).

¹⁵ The Accused was originally scheduled to call 10 witnesses. Professor Vojislav Šešelj’s Rule 65 *ter* Motion, filed confidentially on 14 January 2011. Ultimately, five were called as the Accused refused to examine the remaining witnesses while observing the protective measures such that the Chamber reminded the Accused of the Rule 75(G) procedure according which protective measures may be varied or rescinded. T. 139 (6 June 2011); T. 263–271 (7 June 2011); T. 337–344 (8 June 2011).

¹⁶ One of the tendered documents, D1, was admitted confidentially. T. 148 (private session) (6 June 2011). Three of the tendered documents, D2–D4, were marked for identification as confidential documents pending a decision of the Chamber on their admission. The Chamber later declared the Accused’s request to admit MFI D2 and D3 as moot and denied the admission of MFI D4. Order on the Admission of Defence Exhibits Marked for Identification, 16 August 2011.

¹⁷ T. 248–249 (7 June 2011); T. 315 (8 June 2011).

C. Orders to Remove Material from Website

12. The *Amicus* Prosecutor filed the confidential “Prosecutor’s Motion for Order to Remove Document from Website” on 26 April 2010. On 16 December 2010, the Chamber issued the confidential “Decision on Prosecutor’s Motion for Order to Remove Document from Website” (“16 December 2010 Decision”), ordering the Accused within 14 days (i), to secure the withdrawal of the Book from his website (“Website”) or (ii) to file a report explaining the reasons for not doing so.

13. On 10 January 2011, the Accused submitted “Professor Vojislav Šešelj’s Response/Report on the Trial Chamber II Decision of 16 December 2010”, in which he stated that he did not intend to remove the Book from his Website.¹⁸ In the “Prosecution Response to Report on the Decision of 16 December 2010” filed confidentially on 21 January 2011, the *Amicus* Prosecutor submitted that the Accused had not offered any justification for refusing to comply with the 16 December 2010 Decision and requested that the Chamber issue an order requiring, *inter alia*, the Accused to remove the Book from his Website. On 31 January 2011, the Chamber issued the confidential “Order to Remove Book from Website” wherein it instructed (i), the Accused and “the registrant of the website” to remove the Book from the Website no later than 14 February 2011 and (ii) the Registry to report on the implementation of the order by 21 February.

14. In his response to the list of character witnesses filed by the Accused in these proceedings,¹⁹ the *Amicus* Prosecutor also requested that the Chamber order the Accused to remove from his Website Submissions [REDACTED]²⁰ and [REDACTED],²¹ both of which were filed confidentially in this case upon the orders of the Chamber, and were included in a further book which was available on the Website.²² On 17 February 2011, the Chamber issued the confidential “Order to Remove Confidential Information from Website”, ordering *inter alia* that (i) Submissions [REDACTED] and [REDACTED] be removed from the Website by 3 March 2011; (ii) the Order be notified to Nikola Šešelj and the Accused,²³ as well as to YUNet and any other company that

¹⁸ This report was filed confidentially upon the order of the Chamber.

¹⁹ List of Witnesses Professor Vojislav Šešelj Intends to Call to Testify about His Good Character Pursuant to Rules 65 ter(G)(i), 92 bis(A)(i)(e) and 92 bis(A)(ii)(a) and (c) of the ICTY Rules of Procedure and Evidence (“List of Character Witnesses”), filed confidentially on 8 February 2011 (“List of Character Witnesses”). The Chamber dismissed the motion as frivolous during the Pre-Trial Conference on 22 February 2011, *see* T. 72 (22 February 2011).

²⁰ Professor Vojislav Šešelj’s Rule 65 *ter* Motion, filed confidentially on 14 January 2011.

²¹ List of Character Witnesses.

²² Response to List of Witnesses Vojislav Šešelj Intends to Call, 11 February 2011, confidential, paras 3, 5, 10.

²³ On 21 February 2011, the Registry filed a Rule 33(B) Submission on Order to Remove Documents from Website, informing the Chamber that Nikola Šešelj had become the registrant of the Accused’s Website, and that he had indicated that he did not intend to comply with the “Order to Remove Book from Website” of 31 January 2011.

provides web hosting services to the Website; and (iii) the Registry report on the implementation of this decision no later than 10 March 2011.

15. The Accused's continued failure to comply with the orders to remove the Book, as well as other information which was ordered to be confidential in the course of these proceedings, from his Website is now addressed in the case bearing number IT-03-67-R77.4. In that case, the Chamber issued an order in lieu of indictment pursuant to Rule 77(D)(ii) of the Rules, charging the Accused with one count of contempt pursuant to Rules 77(A) and 77(A)(ii) of the Rules.²⁴

II. SUBMISSIONS OF THE PARTIES

A. The Amicus Prosecutor

1. Concerning the material element

16. The *Amicus* Prosecutor submits that the Witnesses listed in the Indictment were initially covered by two general protective measure orders which were issued by the *Šešelj* Trial Chamber on 13 March 2003 and 11 February 2004, respectively.²⁵

17. The *Amicus* Prosecutor further submits that on 1 June 2005, the *Šešelj* Trial Chamber specifically assigned a pseudonym to six of the Witnesses²⁶ until the witness in question had testified in the *Šešelj* case or until it ordered otherwise.²⁷ Moreover, the *Amicus* Prosecutor asserts that on 30 August 2007, the *Šešelj* Trial Chamber granted pseudonyms to two other Witnesses which were to remain in place until the witness in question testified or it ordered otherwise,²⁸ and pseudonyms to three further Witnesses which were to remain in place until the end of the *Šešelj* case.²⁹ The *Šešelj* Trial Chamber also ordered that the identifying particulars of, and all documents concerning, protected witnesses remain confidential.³⁰ The *Amicus* Prosecutor clarifies that the *Šešelj* Trial Chamber extended previously granted protective measures until the end of the *Šešelj*

²⁴ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.4, Decision on Failure to Remove Confidential Information from Website and Order in Lieu of Indictment, confidential, 9 May 2011.

²⁵ T. 78 (22 February 2011); *see also* T. 349 (8 June 2011) (referring to Ex. P23 and Ex. P24).

²⁶ These witnesses were Zoran Dražilović (who at the time bore pseudonym [REDACTED]), [REDACTED], [REDACTED], Jovan Glamočanin (who at the time bore pseudonym [REDACTED]), [REDACTED] and [REDACTED].

²⁷ T. 79, 113 (22 February 2011); *see also* T. 349 (8 June 2011) (referring to Ex. P25, para. 3).

²⁸ These witnesses were Zoran Rankić (who at the time bore pseudonym [REDACTED]) and Nenad Jović (who at the time bore pseudonym [REDACTED]). T. 79, 114 (22 February 2011); *see also* T. 349 (8 June 2011) (referring to Ex. P27 (confidential)).

²⁹ These witnesses were [REDACTED], [REDACTED], and [REDACTED]. T. 79, 114 (22 February 2011); *see also* T. 349 (8 June 2011) (referring to Ex. P27 (confidential)).

³⁰ T. 79, 114 (22 February 2011); *see also* T. 349 (8 June 2011) (referring to Ex. P27 (confidential)).

case in relation to one of the Witnesses on 30 August 2007,³¹ and two of the Witnesses on 16 October 2007.³² In relation to Zoran Dražilović, the *Amicus* Prosecutor conceded in his closing argument that his pseudonym had been lifted at the time the Book was published.³³ The *Amicus* Prosecutor thus submits that specific protective measures were in place for all the Witnesses at the time the Book was published, with the exception of Zoran Dražilović.³⁴

18. The *Amicus* Prosecutor further contends that the Book reprints submissions made by the Accused that contain statements given by the Witnesses to his defence team and which were filed confidentially in the *Šešelj* case upon the order of the *Šešelj* Trial Chamber according to the regular procedure set out in the “Filing Policy in the Case of *Prosecutor v. Vojislav Šešelj*” filed publicly on 4 June 2007 (“Filing Protocol”).³⁵

19. According to the *Amicus* Prosecutor, the Book breached the aforementioned orders of the *Šešelj* Trial Chamber by: (i) disclosing information enabling the reader to identify the Witnesses by publishing their full names, addresses, identity card numbers, even dates and places of birth, occupation and citizenship numbers in some instances, in breach of the *Šešelj* Trial Chamber’s protective measures orders; and (ii) reprinting witness statements from the confidential submissions in breach of the *Šešelj* Trial Chamber’s reclassification order.³⁶

20. The *Amicus* Prosecutor submits that the Accused authored the Book and caused it to be published by the Serbian Radical Party in early [REDACTED] 2008.³⁷

21. Finally, the *Amicus* Prosecutor contends that the Accused compounded the scope of the breaches not only by publishing the Book in hard cover form, but also by making it available on his Website.³⁸ The Book and submissions contained therein remained available on the Accused’s Website as of 22 February 2011.³⁹

³¹ This pertains to [REDACTED]. T. 79, 114 (22 February 2011); *see also* T. 349 (8 June 2011) (referring to Ex. P27 (confidential)).

³² This pertains to [REDACTED] and Nenad Jović, T. 79–80, 114 (22 February 2011); *see also* T. 349 (8 June 2011); Ex. P29 (confidential).

³³ T. 352 (8 June 2011).

³⁴ T. 80, 82 (22 February 2011); T. 352 (8 June 2011).

³⁵ T. 83 (22 February 2011).

³⁶ T. 82–83, 120–123 (22 February 2011); *see also* T. 353 (8 June 2011).

³⁷ T. 82 (22 February 2011); T. 352 (8 June 2011). *See also* T. 91 (22 February 2011) (submitting that the Book was published sometime between 1 [REDACTED] and 31 December 2008).

³⁸ T. 84–85, 128–131 (22 February 2011); *see also* T. 356–362 (8 June 2011).

³⁹ T. 84 (22 February 2011); *see also* T. 358 (8 June 2011).

2. Concerning the mental element

22. The *Amicus* Prosecutor submits that, as of late 2007, the Accused knew that ten of the Witnesses were protected by orders of the *Šešelj* Trial Chamber and that the *Šešelj* Trial Chamber controlled the process of granting, rescinding or varying such protective measures.⁴⁰ According to the *Amicus* Prosecutor, the fact that the Accused challenged protective measures in the *Šešelj* case on multiple occasions between late 2007 and mid-2008 demonstrates such knowledge.⁴¹ The *Amicus* Prosecutor further asserts that the Accused had knowledge of the Filing Protocol, pursuant to which any submission which reveals the name of a protected witness or the existence or content of confidential information is filed confidentially.⁴² The *Amicus* Prosecutor also asserts that the Accused knew that he was prohibited from publishing the statements of any protected witnesses.⁴³ Under these circumstances, the *Amicus* Prosecutor submits, there is no possible conclusion other than that the Accused knowingly, deliberately and defiantly breached orders of the *Šešelj* Trial Chamber.⁴⁴

B. The Accused

1. Concerning the material element

23. The Accused acknowledges that he is the author of the Book.⁴⁵

24. The Accused admits that he published statements of the Witnesses in the Book.⁴⁶ The Accused submits, however, that the Witnesses did not want or need protective measures,⁴⁷ and that they themselves waived the measures that had been assigned to them by revealing their own personal information to the public.⁴⁸ The Accused contends that he did not publish the statements of protected witnesses that were given to the Prosecution, nor did he publish “a single document [...] that was placed under seal by the Trial Chamber”.⁴⁹ He asserts that he only published statements of

⁴⁰ T. 79–81 (22 February 2011); T. 125–126 (22 February 2011) (referring *inter alia* to Ex. P26, Ex. P28 and Ex. P30). *See also* T. 350, 351–352 (8 June 2011).

⁴¹ T. 81 (22 February 2011); *see also* T. 124 (22 February 2011) (referring to Ex. P33 (confidential), Ex. P34 and Ex. P36).

⁴² T. 117, 127 (22 February 2011).

⁴³ T. 351–352 (8 June 2011); *see also* T. 82–83 (22 February 2011).

⁴⁴ T. 82 (22 February 2011); *see also* T. 351–354 (8 June 2011).

⁴⁵ Ex. P5 (confidential), ST. [REDACTED]; Ex. P6 (confidential), ST. [REDACTED]. The Chamber notes that for the purpose of this Judgement, it shall refer to the transcript in the *Šešelj* case as “ST”.

⁴⁶ T. 105 (22 February 2011).

⁴⁷ T. 101 (22 February 2011); *see also* T. 377–378 (8 June 2011).

⁴⁸ T. 101 (22 February 2011).

⁴⁹ T. 104 (22 February 2011).

the Witnesses provided to him as part of his defence case and that he did so with the Witnesses' permission once they elected to be called as defence witnesses.⁵⁰

25. On the law, the Accused submits that the prosecution of an accused for the crime of contempt pursuant to Rule 77 has neither a basis in the Statute⁵¹ nor in customary international law itself.⁵²

2. Concerning the mental element

26. The Accused argues that his intention was not to disclose the names of protected witnesses but to keep the public informed with respect to the treatment and reliability of witnesses in the *Šešelj* case.⁵³ The Accused submits that he had no other choice than to reveal to the public the information contained in the Book in order to defend himself.⁵⁴

27. The Accused further contends that he did not reveal the names of the Witnesses for the purpose of endangering them, and did not do so until he had the permission of the Witnesses themselves.⁵⁵

III. APPLICABLE LAW

28. While the Tribunal's power in respect of contempt is not expressly articulated in the Statute, it is however firmly established that the Tribunal possesses an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction expressly given to it by the Statute is not frustrated and that its basic judicial functions are safeguarded.⁵⁶ As such, the Tribunal possesses an inherent power to deal with conduct interfering with its administration of justice.⁵⁷

29. Rule 77(A) of the Rules identifies various forms of conduct falling under the Tribunal's inherent jurisdiction. According to this provision, the Tribunal

(A) in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who:

- (i) being a witness before a Chamber, contumaciously refuses or fails to answer a question;

⁵⁰ T. 100–101, 104–105 (22 February 2011).

⁵¹ T. 366–367 (8 June 2011).

⁵² T. 95 (22 February 2011).

⁵³ T. 96, 99–102, 105–106 (22 February 2011).

⁵⁴ T. 379 (8 June 2011).

⁵⁵ T. 105 (22 February 2011).

⁵⁶ *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, Judgment on Allegations of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000 (“*Vujin* Judgement”), para. 13; *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001 (“*Nobile* Appeal Judgement”), para. 36.

⁵⁷ *Vujin* Judgement, para. 13. See also *id.*, paras 18, 26(a); *Nobile* Appeal Judgement, para. 30.

- (ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;
- (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
- (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness; or
- (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber.

30. In the present case, the Accused is charged with contempt of the Tribunal pursuant to Rule 77(A)(ii) for having disclosed information relating to the Tribunal's proceedings in knowing violation of an order of a Chamber. Disclosure of information within the meaning of this Rule includes the publication of a witness's identity where protective measures have been granted to avoid such disclosure.⁵⁸ Disclosure may also include the passing of confidential information to a third party, as well as its inclusion in a publication such as a newspaper or a book.⁵⁹

31. The act of disclosing the particular information must objectively breach an order issued by a Trial or Appeals Chamber, whether such order is written or oral.⁶⁰ A Chamber's confidential issuance of a decision constitutes an order for the non-disclosure of the information contained therein.⁶¹ Moreover, the discretion to lift the confidential status of a decision rests exclusively with "a competent Chamber of the Tribunal with its intimate knowledge of all the facts, information and circumstances surrounding the relevant case",⁶² and orders protecting confidential information thus remain in force "until a Chamber decides otherwise".⁶³

32. The *mens rea* element for this form of contempt is the knowledge of the alleged contemnor that his disclosure of a particular piece of information is done in violation of an order of a Chamber.

⁵⁸ *Nobilo* Appeal Judgement, para. 40(c). The Appeals Chamber referred to three different types of conduct which amount to contempt in the common law system, including "the publication of a witness' identity where protective measures have been granted to avoid such disclosure, with knowledge of the existence of those measures and with the specific intention of frustrating their effect, where the contempt is based not upon the violation of the order granting protective measures but because the disclosure interfered with the administration of justice. *Ibid.*, referring to *Attorney-General v Leveller Magazine Ltd*, per Lord Diplock (at 452), Lord Russell (at 467-468) and Lord Scarman (at 471-472). See also *Prosecutor v. Domagoj Margetić*, Case No. IT-95-14-R77.6, Judgement on Allegations of Contempt, 7 February 2007 ("*Margetić* Judgement"), para. 15.

⁵⁹ *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2-A, Appeal Judgement, 27 September 2006 ("*Marijačić and Rebić* Appeal Judgement"), para. 46; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2, Judgement on Allegations of Contempt, 24 July 2009, para. 9.

⁶⁰ *Prosecutor v. Ivica Marijačić and Markica Rebić*, Case No. IT-95-14-R77.2, Judgement, 10 March 2006 ("*Marijačić and Rebić* Judgement"), para. 17.

⁶¹ *Prosecutor v. Florence Hartmann*, Case No. IT-02-54-R77.5-A, Appeal Judgement, 19 July 2011 ("*Hartmann* Appeal Judgement"), para. 52, referring to *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Decision on Prosecution's Motion to Seal Defence Appeal Brief (confidential), 10 May 2007, p.3.

⁶² *Hartmann* Appeal Judgement, para. 52.

⁶³ *Marijačić and Rebić* Appeal Judgement, para. 45; *Hartmann* Appeal Judgement, para. 52.

Proof of actual knowledge of an order, which can be inferred from a variety of circumstances, satisfies this element. The Appeals Chamber has held that mere negligence in failing to ascertain whether an order had been made granting protective measures to a particular witness could never amount to contempt.⁶⁴ However, it has also held that either wilful blindness or reckless indifference to the existence of the order granting protective measures to a witness is sufficiently culpable conduct to be dealt with as contempt.⁶⁵

33. The formulation of Rule 77(A) indicates that knowing and wilful interference with the administration of justice is a consequence of the disclosure of information relating to Tribunal proceedings in knowing violation of an order of a Chamber.⁶⁶ There is therefore no additional requirement for the Prosecution to prove that such interference actually occurred.⁶⁷

IV. FINDINGS

A. The Material Element of the Offence

34. In June 2005, September 2007, and October 2007, the *Šešelj* Trial Chamber issued a series of decisions (collectively, “Decisions on Protective Measures”) setting out the protective measures for a variety of witnesses. The Chamber will now consider the specific protective measures granted to each of the individual Witnesses in the *Šešelj* case.

1. Whether the Witnesses were the subject of protective measure decisions or orders at the time the Book was published?

35. The *Amicus* Prosecutor and the Accused agree that the Book was published during the course of [REDACTED] 2008.⁶⁸

36. On 10 September 2007, the *Šešelj* Trial Chamber assigned a pseudonym to [REDACTED] that would “continue to be applied throughout the duration of the proceedings” and ordered that [REDACTED] would give evidence through image and voice distortion.⁶⁹ No amendments were

⁶⁴ *Nobilo* Appeal Judgement, para. 45.

⁶⁵ *Id.*, paras 45, 54.

⁶⁶ See also *Prosecutor v. Milošević, Contempt Proceedings Against Kosta Bulatović*, Case No. IT-02-54-R77.4, Decision on Contempt of the Tribunal, 13 May 2005, para. 17. In its decision on the appeal of this decision, the Appeals Chamber held that the Trial Chamber had not erred in this particular aspect of its ruling. *Prosecutor v. Milošević*, Case No. IT-02-54-A-R77.4, Decision on Interlocutory Appeal on Kosta Bulatović Contempt Proceedings, 29 August 2005, para. 40.

⁶⁷ *Marijačić and Rebić* Judgement, para. 19.

⁶⁸ T. 257 (7 June 2011). The Book contains a reference to an interview included in the 1 September 2008 issue of the publication “Vesti”. Ex. P551 (confidential), p.3.

⁶⁹ Decision on Adopting Protective Measures, confidential, 10 September 2007 (“10 September 2007 Decision”), p. 8; see also Ex. P27 (confidential).

made to the applicable protective measures between 10 September 2007 and [REDACTED], and thus [REDACTED] was subject to protective measures at the time the Book was published.

37. On 1 June 2005, the *Šešelj* Trial Chamber assigned a pseudonym to Zoran Dražilović “until such time when the witness is called to testify and the protection set out in the present Decision shall apply [...] until further Order”.⁷⁰ This order was reiterated in the 10 September 2007 Decision.⁷¹ On 3 March 2008, however, the *Šešelj* Trial Chamber ordered that Dražilović’s pseudonym be lifted.⁷² Thus, Dražilović was not subject to protective measures at the time the Book was published.

38. On 1 June 2005, the *Šešelj* Trial Chamber assigned a pseudonym to [REDACTED] “until such time when the witness is called to testify” and ordered that “the protection set out in the present Decision shall apply [...] until further Order”.⁷³ The assignment of a pseudonym to [REDACTED] until the witness’s testimony was confirmed in the 10 September 2007 Decision.⁷⁴ The application of [REDACTED]’s pseudonym was extended to last for the duration of the *Šešelj* case pursuant to the “Decision on Prosecution Motion for Reconsideration of the Decision on Protective Measures of 30 August 2007” (“23 October 2007 Decision”), wherein the *Šešelj* Trial Chamber further ordered that [REDACTED] also testify with image and voice distortion.⁷⁵ No amendments were made to the applicable protective measures between 23 October 2007 and [REDACTED] 2008, and thus [REDACTED] was subject to protective measures at the time the Book was published.

39. On 10 September 2007, Zoran Rankić was assigned a pseudonym that would apply until such time that the witness gives evidence.⁷⁶ No amendments were made to the applicable protective measures between 10 September 2007 and [REDACTED] 2008, and Rankić had not testified prior

⁷⁰ 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 (“1 June 2005 Decision”), p. 6; *see also* Ex. P25.

⁷¹ Decision on Adopting Protective Measures, confidential, 10 September 2007, p. 8.

⁷² Second Order Regarding the Testimony of Zoran Dražilović as a Witness Summoned by the Chamber, 3 March 2008, p. 4; *see* Order to Lift Confidential Status of Two Orders on Witness Zoran Dražilović, 28 September 2011. *See also* Zoran Dražilović, T. 249, 251 (7 June 2011).

⁷³ 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, p. 6; *see also* Ex. P25.

⁷⁴ 10 September 2007 Decision, p. 8; *see also* Ex. P27 (confidential).

⁷⁵ Decision on Prosecution Motion for Reconsideration of the Decision on Protective Measures of 30 August 2007, 23 October 2007, confidential, [REDACTED]; *see also* Ex. P29 (confidential).

⁷⁶ 10 September 2007 Decision, p. 8; *see also* Ex. P27 (confidential).

to [REDACTED] 2008.⁷⁷ Therefore, Rankić was subject to protective measures at the time the Book was published.

40. On 10 September 2007, the *Šešelj* Trial Chamber assigned a pseudonym to DS-1⁷⁸ that would “continue to be applied throughout the duration of the proceedings”.⁷⁹ The *Šešelj* Trial Chamber also ordered that DS-1 give evidence through image distortion.⁸⁰ No amendments were made to the applicable protective measures between 10 September 2007 and [REDACTED] 2008, and thus DS-1 was subject to protective measures at the time the Book was published.

41. [REDACTED] was assigned a pseudonym that would “continue to be applied throughout the duration of the proceedings” pursuant to the *Šešelj* Trial Chamber’s 10 September 2007 Decision.⁸¹ In the same decision, the *Šešelj* Trial Chamber ordered that [REDACTED] would give evidence in closed session.⁸² No amendments were made to the applicable protective measures between 10 September 2007 and [REDACTED] 2008, and thus [REDACTED] was subject to protective measures at the time the Book was published.

42. Nenad Jović was assigned a pseudonym that would apply until such time that the witness gives evidence pursuant to the *Šešelj* Trial Chamber’s 10 September 2007 Decision.⁸³ The application of the pseudonym was extended to last “for the duration of the present case” pursuant to the 23 October 2007 Decision, wherein the *Šešelj* Trial Chamber also stated that Jović’s identity would not need to be disclosed until 30 days before his testimony and ordered that Jović testify with image and voice distortion.⁸⁴ No amendments were made to the applicable protective measures between 23 October 2007 and [REDACTED] 2008,⁸⁵ and thus Jović was subject to protective measures at the time the Book was published.

43. In its 1 June 2005 Decision, the *Šešelj* Trial Chamber assigned DS-2⁸⁶ a pseudonym “until such time when the witness is called to testify” and ordered that “the protection set out in the

⁷⁷ Zoran Rankić testified in the *Šešelj* case on 11 and 12 May 2010, at which date the pseudonym previously assigned to him ceased to apply, see ST. 15898 (11 May 2010).

⁷⁸ In order to ensure the efficacy of protective measures for those witnesses who are still the subject of protective measures and who have appeared as witnesses for the Accused in this case, the Chamber assigned new pseudonyms to them. DS-1 was assigned pseudonym [REDACTED] in the *Šešelj* case.

⁷⁹ 10 September 2007 Decision, p. 8; see also Ex. P27 (confidential).

⁸⁰ 10 September 2007 Decision, p. 8; see also Ex. P27 (confidential).

⁸¹ 10 September 2007 Decision, p. 8; see also Ex. P27 (confidential).

⁸² 10 September 2007 Decision, p. 8; see also Ex. P27 (confidential).

⁸³ 10 September 2007 Decision, p. 8; see also Ex. P27 (confidential).

⁸⁴ 23 October 2007 Decision, p. 5; see also Ex. P29 (confidential).

⁸⁵ [REDACTED].

⁸⁶ DS-2 was assigned pseudonym [REDACTED] in the *Šešelj* case.

present Decision shall apply [...] until further Order”.⁸⁷ This order was clarified in the 10 September 2007 Decision, wherein the *Šešelj* Trial Chamber ordered that the pseudonym would “continue to be applied throughout the duration of the proceedings”.⁸⁸ In the same decision, the *Šešelj* Trial Chamber ordered that DS-2 would give evidence through image and voice distortion.⁸⁹ No amendments were made to the applicable protective measures between 10 September 2007 and [REDACTED] 2008, and thus DS-2 was subject to protective measures at the time the Book was published.

44. Jovan Glamočanin was assigned a pseudonym “until such time when the witness is called to testify and the protection set out in the present Decision shall apply [...] until further Order” pursuant to the *Šešelj* Trial Chamber’s 1 June 2005 Decision.⁹⁰ No amendments were made to the applicable protective measures between 1 June 2005 and [REDACTED] 2008, and Glamočanin had not testified in the *Šešelj* case by the time the Book was published.⁹¹ Therefore, Glamočanin was subject to protective measures at the time the Book was published.

45. In the 1 June 2005 Decision, the *Šešelj* Trial Chamber assigned DS-3⁹² a pseudonym “until such time when the witness is called to testify” and ordered that “the protection set out in the present Decision shall apply [...] until further Order”.⁹³ This order was reiterated in the 10 September 2007 Decision, wherein the *Šešelj* Trial Chamber stated that the assigned pseudonym would apply to DS-3 and others “until they give evidence”.⁹⁴ No amendments were made to the applicable protective measures between 10 September 2007 and [REDACTED] 2008, and DS-3 had not testified in the *Šešelj* case by the time the Book was published.⁹⁵ Therefore, DS-3 was subject to decisions on protective measures at the time the Book was published.

46. In the 1 June 2005 Decision, the *Šešelj* Trial Chamber assigned [REDACTED] a pseudonym “until such time when the witness is called to testify” and ordered that the protection set out in the present Decision shall apply [...] until further Order”.⁹⁶ This order was reiterated in the 10 September 2007 Decision, wherein the *Šešelj* Trial Chamber stated that the assigned pseudonym would apply to [REDACTED] and others “until they give evidence”.⁹⁷ No amendments were made

⁸⁷ 1 June 2005 Decision, p. 6; *see also* Ex. P25.

⁸⁸ 10 September 2007 Decision, p. 8; *see also* Ex. P27 (confidential).

⁸⁹ 10 September 2007 Decision, p. 8; *see also* Ex. P27 (confidential).

⁹⁰ 1 June 2005 Decision, p. 6; *see also* Ex. P25.

⁹¹ Jovan Glamočanin testified in the *Šešelj* case on 10 and 11 December 2008. [REDACTED].

⁹² DS-3 was assigned pseudonym [REDACTED] in the *Šešelj* case.

⁹³ 1 June 2005 Decision, p. 6; *see also* Ex. P25.

⁹⁴ 10 September 2007 Decision, p. 8; *see also* Ex. P27 (confidential).

⁹⁵ [REDACTED].

⁹⁶ 1 June 2005 Decision, p. 6; *see also* Ex. P25.

⁹⁷ 10 September 2007 Decision, p. 8; *see also* Ex. P27 (confidential).

to the applicable protective measures between 10 September 2007 and [REDACTED] 2008, and [REDACTED] had not testified in the *Šešelj* case by the time the Book was published.⁹⁸ Therefore, [REDACTED] was the subject of decisions on protective measures at the time the Book was published.

47. The 10 September 2007 Decision also contained a general order to the Accused to “refrain from revealing the names, addresses, places of residence or any other information which may identi[f]y [sic] the protected witnesses, and from disclosing this information to any third party except when this information is directly and specifically necessary for the preparation and the presentation of the Defence case”.⁹⁹

48. On this basis, the Chamber finds that, at the time the Book was published, [REDACTED], [REDACTED], Rankić, DS-1, [REDACTED], Jović, DS-2, Glamočanin, DS-3, and [REDACTED] were subject to decisions on protective measures which protected their identities from public disclosure or disclosure to third parties except as directly and specifically necessary for the preparation and presentation of the Defence case.

2. Whether the Book reveals identifying information of “protected witnesses” within the meaning of the Decisions on Protective Measures?

49. At the outset, the Chamber recalls the Appeals Chamber’s direction that “[b]y publishing detailed identifying information of individuals whose identities are protected, and by suggesting that they could be Prosecution witnesses, Šešelj disclosed the identifying information of ‘protected witnesses’ within the meaning of the Protective Measures Decision.”¹⁰⁰ However, the Appeals Chamber later added that “[e]ven if the statements of those individuals could be interpreted as not identifying them as Prosecution Witnesses but as Defence witnesses, it must be recalled that a court order remains in force until a Chamber decides otherwise.”¹⁰¹ Accordingly, the Chamber considers that the scope of the Decisions on Protective Measures must be interpreted to extend to information which could suggest that individuals whose identities were protected at the time the Book was published could be involved in the *Šešelj* case, regardless of the nature of such involvement.

50. The Chamber will now analyse the contents of the Book with regard to each of the Protected Witnesses individually by enquiring (i) whether the Book contains their identifying information and (ii) whether the Book suggests that they could be involved in the *Šešelj* case.

⁹⁸ [REDACTED].

⁹⁹ 10 September 2007 Decision, pp. 8–9; *see also* Ex. P27 (confidential).

(a) [REDACTED]

51. The statement in the Book which is attributed to [REDACTED] refers to his full name, date and place of birth, address and place of residence, identification card number, unique master citizen number, ethnicity, religion, and medical details.¹⁰² It also contains a reference to [REDACTED]'s father's name, as well as the name, father's name, date and place of birth, identification card number, and unique master citizen numbers of both [REDACTED]'s wife and sister-in-law, in addition to identifying both as such.¹⁰³

52. The statement further details contact which allegedly occurred between [REDACTED] and Tribunal investigators,¹⁰⁴ disavows any statement that [REDACTED] might have made to the Prosecution,¹⁰⁵ and states that [REDACTED] was offered various benefits by the Prosecution should he testify.¹⁰⁶ The Chamber considers that such information constitutes information which identifies [REDACTED] and suggests that [REDACTED] could be involved in the *Šešelj* case.

(b) [REDACTED]

53. The statement in the Book which is attributed to [REDACTED] refers to his full name, address, and identification card number, unique master citizen number, ethnicity, religion, and medical details of,¹⁰⁷ as well as his son's date of birth.¹⁰⁸ The statement also suggests that [REDACTED] gave a court-certified statement saying: "[REDACTED]".¹⁰⁹ The statement also states that it was "[REDACTED]".¹¹⁰ The Chamber considers that such information constitutes information which identifies [REDACTED] and suggests that [REDACTED] could be involved in the *Šešelj* case.

(c) Zoran Rankić

54. One of the statements in the Book which is attributed to Rankić refers to his full name, date and place of birth, address and place of residence, unique master citizen number, ethnicity, and

¹⁰⁰ Appeals Chamber Decision, para. 21.

¹⁰¹ Appeals Chamber Decision, para. 22.

¹⁰² Ex. P55J (confidential), p. 1.

¹⁰³ Ex. P55J (confidential), p. 3.

¹⁰⁴ Ex. P55J (confidential), pp. 1–2.

¹⁰⁵ Ex. P55J (confidential), p. 2.

¹⁰⁶ Ex. P55J (confidential), p. 2.

¹⁰⁷ Ex. P55N (confidential), p. 1.

¹⁰⁸ Ex. P55N (confidential), p. 2.

¹⁰⁹ Ex. P55N (confidential), p. 1.

¹¹⁰ Ex. P55N (confidential), p. 3.

religion.¹¹¹ A further statement in the Book includes a reference to Rankić's full name and identification card number along with Rankić's address and place of residence.¹¹²

55. Collectively, the statements contend that Rankić had contact with Tribunal investigators,¹¹³ was a potential Prosecution witness,¹¹⁴ travelled to The Hague,¹¹⁵ and agreed to be a Prosecution witness before deciding to become a Defence witness.¹¹⁶ The Chamber considers that such information constitutes information which identifies Rankić and suggests that Rankić could be involved in the *Šešelj* case.

(d) DS-1

56. One of the statements in the Book that is attributed to DS-1 refers to his full name, date and place of birth, address and place of residence, identification card number, unique master citizen number, occupation, ethnicity, and religion.¹¹⁷ A further statement in the Book refers to DS-1's full name, address and place of residence, and identification card number.¹¹⁸ The Book also identifies [REDACTED].

57. One of the statements also contends that DS-1 "[REDACTED]",¹¹⁹ details alleged contacts between Tribunal investigators and DS-1,¹²⁰ states that DS-1 and his wife were "[REDACTED]".¹²¹ Another statement in the Book asserts: "[REDACTED]".¹²² The Chamber considers that such information constitutes information which identifies DS-1 and suggests that DS-1 could be involved in the *Šešelj* case.

(e) [REDACTED]

58. The statement in the Book which is attributed to [REDACTED] refers to his full name, date and place of birth, address and place of residence, identification card number, unique master citizen number, ethnicity, religion, and medical details, as well as [REDACTED]'s father's name.¹²³

¹¹¹ Ex. P55D (confidential), p. 1.

¹¹² Ex. P55E (confidential), p. 1.

¹¹³ Ex. P55D (confidential), pp. 5–6.

¹¹⁴ Ex. P55D (confidential), p. 2.

¹¹⁵ Ex. P55D (confidential), p. 7; Ex. P55E, pp. 3–4

¹¹⁶ Ex. P55E (confidential), p. 4.

¹¹⁷ Ex. P55K (confidential), p. 1

¹¹⁸ Ex. P55L (confidential), p. 1.

¹¹⁹ Ex. P55K (confidential), p. 1.

¹²⁰ Ex. P55K (confidential), pp. 2–7.

¹²¹ Ex. P55K (confidential), p. 4.

¹²² Ex. P55L (confidential), p. 1.

¹²³ Ex. P55M (confidential), p. 1.

59. The statement also details [REDACTED]'s alleged contact with Tribunal investigators¹²⁴ and contains detailed descriptions of events and explanations that [REDACTED] allegedly described to the Tribunal investigators.¹²⁵ The statement further reads as follows: [REDACTED].¹²⁶ The Chamber considers that such information constitutes information which identifies [REDACTED] and suggests that [REDACTED] could be involved in the *Šešelj* case.

(f) Nenad Jović

60. The statement in the Book which is attributed to Jović refers to his full name, address and place of residence, and identification number, and describes his education.¹²⁷ In the statement, Jović is also said to state: “[REDACTED]”.¹²⁸ Additionally, the statement claims that Jović “[REDACTED]”,¹²⁹ and details such alleged pressure at the hands of various “persons from the Hague Tribunal” or “investigators”.¹³⁰ The statement further alleges that Jović “[REDACTED]”.¹³¹ The Chamber considers that such information constitutes information which identifies Jović and suggests that Jović could be involved in the *Šešelj* case.

(g) DS-2

61. The statement in the Book which is attributed to DS-2 refers to his full name, address and place of residence, identification number,¹³² marital status, ethnicity, religion, occupation, and prior criminal convictions of, as well as his employment and educational history.¹³³ The statement also refers to DS-2's [REDACTED] by name and discloses [REDACTED]'s date of birth.¹³⁴ It further states that DS-2 received a summons from the Tribunal, that DS-2 told the investigators that he wanted to be a Defence witness, that Tribunal investigators asked DS-2 to give false testimony and “[REDACTED]”.¹³⁵ The Chamber considers that such information constitutes information which identifies DS-2 and suggests that DS-2 could be involved in the *Šešelj* case.

¹²⁴ Ex. P55M (confidential), pp. 1–2.

¹²⁵ Ex. P55M (confidential), pp. 3–5.

¹²⁶ Ex. P55M (confidential), p.1.

¹²⁷ Ex. P55Q (confidential), p. 1.

¹²⁸ Ex. P55Q (confidential), p. 1.

¹²⁹ Ex. P55Q (confidential), p. 2.

¹³⁰ Ex. P55Q (confidential), p. 2.

¹³¹ Ex. P55Q (confidential), p. 3.

¹³² Ex. P55H (confidential), p. 1.

¹³³ Ex. P55H (confidential), p. 5.

¹³⁴ Ex. P55H (confidential), p. 1.

¹³⁵ Ex. P55H (confidential), pp. 11–12.

(h) Jovan Glamočanin

62. The statements in the Book which are attributed to Glamočanin refer to his full name, educational history and professional membership, address and place of residence, date and place of birth, identification card number, and unique master citizen number.¹³⁶ They also provide details regarding contact which allegedly occurred between Glamočanin and Tribunal investigators.¹³⁷ According to one statement, Glamočanin was told that he “must testify” but could do so in closed session and with image and voice distortion and that if he failed to appear, he would be arrested.¹³⁸ The Chamber considers that such information constitutes information which identifies Glamočanin and suggests that Glamočanin could be involved in the *Šešelj* case.

(i) DS-3

63. The statements in the Book which are attributed to DS-3 refer to his full name, father’s name, date and place of birth, address and place of residence, identification number, unique master citizen number, ethnicity, religion, citizenship, and veteran status.¹³⁹ They also state that DS-3 had contact with Tribunal investigators,¹⁴⁰ but refused to be a witness for the Prosecution.¹⁴¹ The Chamber considers that such information constitutes information which identifies DS-3 and suggests that DS-3 could be involved in the *Šešelj* case.

(j) [REDACTED]

64. The statement in the Book which is attributed to [REDACTED] refers to his full name, address and place of residence, identification card number, education, and occupation.¹⁴² It also refers to [REDACTED] having given a court-certified statement “[REDACTED]”.¹⁴³ The Chamber considers that such information constitutes information which identifies [REDACTED] and suggests that [REDACTED] could be involved in the *Šešelj* case.

65. On this basis, the Chamber considers that the Book contains the identifying information of [REDACTED], [REDACTED], Rankić, DS-1, [REDACTED], Jović, DS-2, Glamočanin, DS-3, and [REDACTED], and suggests that each could be involved in the *Šešelj* case.

¹³⁶ Ex. P55F (confidential), p. 1; Ex. P55G (confidential), p. 1.

¹³⁷ Ex. P55F (confidential), pp. 1–5; Ex. P55G (confidential), pp. 1–7.

¹³⁸ Ex. P55F (confidential), p. 5.

¹³⁹ Ex. P55B (confidential), pp. 1–3; Ex. P55C (confidential), p. 1.

¹⁴⁰ Ex. P55B (confidential), p. 1; Ex. P55C (confidential), p. 1.

¹⁴¹ Ex. P55B (confidential), pp. 2–3.

¹⁴² Ex. P55P (confidential), p. 1.

¹⁴³ Ex. P55P (confidential), p. 1.

B. The Mental Element of the Offence

66. In relation to whether the Accused knew that the information contained in the Book was subject to protective orders or decisions issued by the *Šešelj* Trial Chamber at the time of its publication, the Chamber first notes that the Decisions on Protective Measures, specifically those of 1 June 2005, 30 August 2007, 10 September 2007, and 23 October 2007, were all *inter partes* documents which were provided to the Accused.¹⁴⁴ By the time the Book was published, the Accused was thus fully informed of the protective measures granted by the *Šešelj* Trial Chamber in the *Šešelj* case.

67. The Chamber further notes that on a number of occasions throughout the *Šešelj* case, the Accused requested that protective measures previously granted to witnesses in that case be altered by requesting that decisions in their regard be reconsidered or that he be granted leave to appeal them.¹⁴⁵ It is therefore quite clear that the Accused was aware that protective measures in place had to be varied by the Chamber that ordered them in the first place and that he could not simply reveal the identity of witnesses who had been granted protective measures as he saw fit. For instance, in a motion for reconsideration of protective measures filed on 9 November 2007 in the *Šešelj* case, the Accused had raised, as a matter of principle, the issue of whether protective measures should continue to apply to witnesses who had disclosed their names in public themselves: [REDACTED].¹⁴⁶ This motion was denied and the *Šešelj* Trial Chamber recalled that “the pre-trial Judge, in the Decision of 30 August, granted protective measures only insofar as they achieved the right balance between the protection of witnesses and the rights of the Accused”.¹⁴⁷

68. Further, in a motion for the rescission of protective measures filed on 19 May 2008, the Accused stated that one of the witnesses for whom closed session had been granted “did not want to act as a witness for the Prosecution but for the Defence.”¹⁴⁸ Again, the *Šešelj* Trial Chamber denied this motion and reiterated that “the Chamber granted these protective measures only to the extent that the measures achieved a reasonable balance between the protection of witnesses and the rights of the Accused”.¹⁴⁹ In the year prior to the publication of the Book, the Accused had therefore exhausted all the legal remedies available to him under the Rules to seek the variation or rescission of the protective measures in place, was unsuccessful in so doing, and thus opted to take it upon

¹⁴⁴ Ex. P26; Ex. P28; Ex. P30.

¹⁴⁵ Ex. P33 (confidential); Ex. P36 (referring to “Interlocutory Appeal by Professor Šešelj Against the Oral Decision of the Trial Chamber of 7 November 2007”); Ex. P38.

¹⁴⁶ Ex. P33 (confidential), pp. 7-8.

¹⁴⁷ Ex. P34, para. 16.

¹⁴⁸ Ex. P38, p. 3.

¹⁴⁹ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on the Accused’s Motion to Rescind Protective Measures (Submission 389), 23 June 2008, p. 5.

himself to “vary” the protective measures with which he disagreed. Quite tellingly, in his closing argument on 8 June 2011, the Accused declared that his “mission here is to disassemble The Hague tribunal”¹⁵⁰ and that in attempting to do so, “the public is [his] only weapon”.¹⁵¹

69. The Accused argues that protected witnesses who themselves decide to reveal their identity may no longer be considered as protected. He refers to two orders issued in the *Šešelj* case, in which he submits the *Šešelj* Trial Chamber ultimately decided that each witness can eventually decide for himself whether to testify with protective measures.¹⁵² The Chamber recalls that the orders in question referred to by the Accused specifically pertained to Zoran Dražilović and no other witness. Had the *Šešelj* Trial Chamber wished to also lift the protective measures in place for other witnesses it would have done so. It did not.

70. The Chamber recalls that on 4 June 2007, pursuant to the instructions of the Pre-Trial Judge in the *Šešelj* case, the Registry issued the Filing Protocol, which articulates the procedure followed in the *Šešelj* case when the Registry receives a submission from the Accused with no specification as to whether it should be filed publicly or confidentially. Pursuant to this protocol, if, after a brief review of the submission, the Registry considers that it contains confidential information, the Registry informs the *Šešelj* Trial Chamber, which, through its legal officer, then instructs the Registry as to whether the submission should be filed publicly or confidentially. *Šešelj* is put on notice of the filing—as well as its status as either a public or a confidential document—through *procès-verbaux* sent by the Registry in his own language. Furthermore, on 20 August 2007, this procedure was further explained to the Accused orally.¹⁵³ Accordingly, in addition to clearly being aware that the Witnesses were subject to protective measures, the Accused was informed on multiple occasions prior to the publication of the Book that submissions which contained the statements of some of these protected Witnesses also included in the Book that he had submitted as public filings had to be filed confidentially according to the Filing Protocol.¹⁵⁴ [REDACTED]. On [REDACTED], *Šešelj* received several *procès-verbaux* from the Registry informing him that Submissions [REDACTED], [REDACTED], and [REDACTED] had been filed confidentially on these respective days.¹⁵⁵ During the hearing of 8 April 2008 in the *Šešelj* case, several months before the publication of the Book, the Accused was reminded that “the statements of protected

¹⁵⁰ T. 370 (8 June 2011).

¹⁵¹ T. 379 (8 June 2011).

¹⁵² T. 251 (7 June 2011).

¹⁵³ ST. 1429 (20 August 2007).

¹⁵⁴ Ex. P40; Ex. P41.

¹⁵⁵ Ex. P45; Ex. P47; Ex. P49.

witnesses are, by definition, also protected, and it is absolutely banned to publish outside this legal arena, these kinds of statements.”¹⁵⁶

71. For all of the above, the Chamber is therefore satisfied beyond a reasonable doubt that the Accused knew that he was disclosing information which identified ten of the Witnesses and revealed that they could be involved in the *Šešelj* case when he published the Book, and that, therefore, he did so intentionally, with the knowledge that by doing so he was violating decisions of the *Šešelj* Trial Chamber.

V. SENTENCING

A. Submissions of the Parties

1. The Amicus Prosecutor

72. The *Amicus* Prosecutor submits that the Accused’s actions were deliberate, disingenuous, and defiant, and that the Chamber should consider these as aggravating circumstances.¹⁵⁷ Specifically, the *Amicus* Prosecutor points to the fact that the publications were made following a specific warning by the Presiding Judge in the *Šešelj* case as well as “full and vigorous litigation by the Accused” regarding the protective measures.¹⁵⁸

73. According to the *Amicus* Prosecutor, the Accused placed the Book on the Website after selling 10,000 hard copies, and “appears to be welcoming being charged [with contempt] because it advances his agenda”.¹⁵⁹ The *Amicus* Prosecutor argues that by publishing the Book electronically on the Website, the Accused greatly increased the scope of the contemptuous disclosure.¹⁶⁰ The *Amicus* Prosecutor explains that the Book can be more easily located and disseminated in electronic form.¹⁶¹ Finally, the *Amicus* Prosecutor highlights the fact that the Chamber afforded the Accused more than one opportunity to remove the Book, yet the Accused failed to do so and enlisted a relative to assist him in maintaining the Website.¹⁶²

74. As a result of these aggravating circumstances, as well as the fact that the Accused was previously convicted for contempt of court and sentenced to a term of 15 months’ imprisonment,

¹⁵⁶ Ex. P4, ST. 5707 (8 April 2008).

¹⁵⁷ T. 362 (8 June 2011).

¹⁵⁸ T. 362 (8 June 2011).

¹⁵⁹ T. 364 (8 June 2011), referring to Ex. P14.

¹⁶⁰ T. 128 (22 February 2011); T. 361 (8 June 2011).

¹⁶¹ T. 128–130 (22 February 2011); T. 359–361 (8 June 2011).

¹⁶² T. 362 (8 June 2011).

the *Amicus* Prosecutor submits that a term of imprisonment of approximately three years would be appropriate in this case.¹⁶³

2. The Accused

75. The Accused professed indifference regarding any sentence that might be imposed.¹⁶⁴ The Accused also admitted that he published the Book deliberately and spitefully,¹⁶⁵ that he acted pre-emptively to frustrate the actions of the Registrar pursuant to the Chamber's orders,¹⁶⁶ and stated that he would not remove any material from the Website or permit it to be shut down.¹⁶⁷

B. Sentencing Law

76. Rule 77(G) of the Rules provides that the maximum penalty that may be imposed on a person found to be in contempt of the Tribunal shall be a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 Euros, or both.

77. Article 24(2) of the Statute and Rule 101(B) of the Rules provide factors to be taken into account in the determination of sentence, although they do not constitute "binding limitations on a chamber's discretion to impose a sentence".¹⁶⁸ The most important factors to be considered in determining the appropriate penalty in this case are the gravity of the contempt and the need to deter repetition and similar conduct by others.¹⁶⁹ The Chamber also considers whether there are any aggravating and mitigating circumstances.

C. Findings

78. The Chamber finds that the deliberate way in which the protective measures issued by the *Šešelj* Trial Chamber were violated constitutes a serious interference with the administration of justice. The Chamber also considers that the electronic publication and dissemination of the Book increases the scope of the disclosure and therefore renders the violation of the *Šešelj* Trial Chamber's orders even more serious.

¹⁶³ T. 364 (8 June 2011).

¹⁶⁴ T. 370 (8 June 2011) ("I'm not interested whether you are going to sentence me to 15, 20, or I don't know how many years."). The Accused later requested a term of 30 years' imprisonment. T. 385 (8 June 2011).

¹⁶⁵ T. 381 (8 June 2011).

¹⁶⁶ T. 383 (8 June 2011).

¹⁶⁷ T. 381–383 (8 June 2011).

¹⁶⁸ See, e.g., *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Judgement on Allegations of Contempt, 17 December 2008 ("*Haraqija and Morina* Judgement"), para. 103; *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, paras 241-242.

¹⁶⁹ See, e.g., *Haraqija and Morina* Judgement, para. 103; *Margetić* Judgement, para. 84.

79. Moreover, the Chamber takes into account the Accused's lack of remorse as well as his indication that he intends to continue disclosing information in knowing violation of orders of a Chamber in the future:

Once one proceedings is completed, I'm going to create conditions for the next one. As soon as we finish the next one, I'm going to prepare myself for the next one and the next one, up to 10. That's what I decided.¹⁷⁰

80. The Chamber gives particular consideration to the potentially adverse impact the Accused's conduct may have upon the work of the Tribunal. The Chamber can only reiterate that public confidence in the effectiveness of orders and decisions on protective measures is absolutely vital to the success of the work of the Tribunal.¹⁷¹ The Chamber is also mindful of the need to take steps to ensure that this type of behaviour from the Accused or any other person is discouraged in the future.

81. The Chamber, therefore, imposes a penalty which recognises the gravity of the breach and the need for deterrence, and sentences the Accused to a single term of eighteen months to be served concurrently with the sentence of fifteen months imposed by the Chamber on 24 July 2009 in Case No. IT-03-67-R77.2.

¹⁷⁰ T. 380 (8 June 2011).

¹⁷¹ *Marijačić and Rebić* Judgement, para. 50, as referred to in *Prosecutor v. Vojislav Šešelj*, Case No IT-03-67-R77.2, Public Edited Version of "Judgement on Allegations of Contempt", 24 July 2009, para. 56.

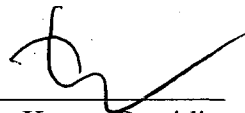
VI. DISPOSITION

82. For the foregoing reasons, having considered all the evidence and arguments presented by the parties, pursuant to Rules 54 and 77 of the Rules, the Chamber:

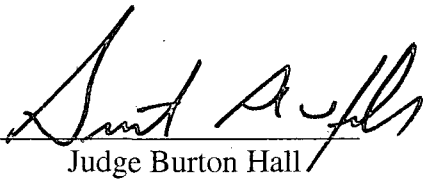
1. **FINDS** the Accused, Vojislav Šešelj, **GUILTY** of one count of contempt of the Tribunal, punishable under Rule 77(A)(ii) of the Rules;

2. **SENTENCES** the Accused to a single term of imprisonment of eighteen months to be served concurrently with the sentence of fifteen months imposed by the Chamber on 24 July 2009 in Case No. IT-03-67-R77.2.

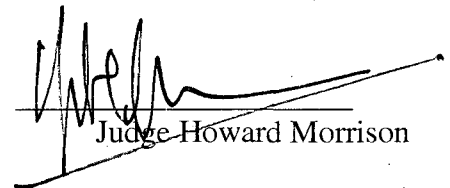
A confidential and public version of this Judgement is issued in English and French, the confidential English text being authoritative.



Judge O-Gon Kwon, Presiding



Judge Burton Hall



Judge Howard Morrison

Dated this thirty-first day of October 2011
At The Hague
The Netherlands

[Seal of the Tribunal]