



(IT-03-67-R77.2)

VOJISLAV ŠEŠELJ**VOJISLAV ŠEŠELJ***Convicted of contempt of the Tribunal*

An accused before the ICTY

- Sentenced to 15 months' imprisonment
- The case is pending before the Appeals Chamber

*Crimes convicted of:***Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal)**

- He knowingly and wilfully interfered with the administration of justice by disclosing confidential information in violation of orders granting protective measures and by disclosing excerpts of the written statement of a witness in a book authored by him.

Order (in lieu of indictment)	21 January 2009
Initial appearance	6 March 2009, pleaded not guilty
Trial Chamber Judgement	24 July 2009, sentenced to 15 months' imprisonment

STATISTICS

Trial days	1
Witnesses called by Prosecution	0
Prosecution exhibits	32
Witnesses called by Defence	0
Defence exhibits	0

TRIAL	
Commenced	29 May 2009
Closing arguments	29 May 2009
Trial Chamber II	Judge O-Gon Kwon (presiding), Judge Iain Bonomy and Judge Kevin Parker
<i>Amicus Curiae</i> Prosecutor	Bruce MacFarlane
Counsel for the Defence	Self-representation
Judgement	24 July 2009

APPEAL	
Appeals Chamber	Judge Mehmet Güney (presiding), Judge Fausto Pocar, Judge Andréia Vaz, Judge Theodor Meron and Judge Cristoph Flügge
<i>Amicus Curiae</i> Prosecutor	Bruce MacFarlane
Counsel for the Defence	Self-representation

RELATED CASES

ŠEŠELJ (IT-03-67)

INDICTMENT AND CHARGES

In accordance with Rule 77 of its Rules of Procedure and Evidence, the Tribunal can conduct proceedings for contempt of court. The ICTY's jurisdiction in respect of contempt is not expressly outlined in the Statute. However, it is 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. As an international criminal court, the Tribunal possesses this inherent power to deal with conduct interfering with its administration of justice. Such interference may be by way of conduct which obstructs, prejudices or abuses the Tribunal's administration of justice. Those who knowingly and wilfully interfere with the Tribunal's administration of justice in such a way may, therefore, be held in contempt of the Tribunal.

The Trial Chamber trying the case of *Prosecutor v. Vojislav Šešelj* ordered various protective measures in respect of witnesses. In its "Decision on Adopting Protective Measures" of 30 August 2007, the Trial Chamber ordered that the use of pseudonyms, as well as image and voice distortion, shall remain applicable in respect of these witnesses. The Trial Chamber also prohibited the disclosure of "the names, addresses, places of residence or any other information which might identify the protected witnesses" and also the disclosure of "this information to any third party except when this information would be directly and specifically necessary for the preparation and the presentation of the Defence case". In addition, the disclosure of the written statement of a witness was prohibited by the Trial Chamber's "Decision on Prosecution's Motion for Order of Non-disclosure" filed on 13 March 2003. After the issuing of these orders and decisions granting protective measures, a book authored by Vojislav Šešelj was published. The book contained numerous references to three witnesses protected by the measures, including their real names, occupations and places of residence, which enabled the identification of these witnesses. The book also contained excerpts of the written statement of one of these witnesses, the disclosure of which was prohibited by the decision of 13 March 2003.

At the time of the publication of the book, Vojislav Šešelj had knowledge of the order prohibiting the disclosure of the written statement of the witness in issue and of the orders adopting protective measures in respect of, and orders specifically prohibiting the disclosure of information which may identify, the three protected witnesses referred to above.

The order in lieu of an indictment against Vojislav Šešelj was filed on 21 January 2009 charging him with:

- Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence)

TRIAL

The trial took place on 29 May 2009.

TRIAL CHAMBER JUDGEMENT

Firstly, the Chamber recalled that the accused admitted to being the author of the book and having given instructions regarding its preparation. Secondly, in light of the evidence presented, the Chamber was also satisfied that the book was published after decisions granting protective measures in respect of each of the three protected witnesses had been issued by the Trial Chamber hearing the Šešelj case. Thirdly, the

book abounded with a myriad of detailed personal information related to the said witnesses both under their own names and under the pseudonyms attributed to them in the Šešelj case.

The Chamber was thus satisfied beyond a reasonable doubt that the information contained in the book, when read as a whole, identified each of the three protected witnesses and thus violated the orders granting protective measures issued by the Trial Chamber hearing the Šešelj case.

The Chamber considered that the accused was bound by the relevant decisions to ensure that the information contained in the book would not identify, or tend to identify, protected witnesses. These decisions were either *inter partes* documents or were issued orally in court in the presence of the accused. He thus knew of the relevant protective measures by the time the book was published.

Stressing that the book was not intended for the general public, the accused submitted that his intention was not to disclose the names of protected witnesses, but to “unmask a plot in public” with respect to some of the events referred to in the indictment in the Šešelj case. The accused also argued that he did not reveal the names of the protected witnesses for the purpose of intimidating them. The Chamber considered this contention to be irrelevant to the accused’s responsibility pursuant to Rule 77(A)(ii), where the *mens rea* element was solely whether the alleged contemnor knew that his disclosure of a particular piece of information was done in violation of an order of a Chamber.

During the course of trial, the accused produced five press articles in support of his contention that the identity of the protected witnesses was already available to the public prior to the publication of the book. The Chamber considered that these articles neither mentioned that the witness was a protected witness in the Šešelj case nor contained any references to the pseudonyms assigned to the witnesses in the Šešelj case. Therefore, they did not support the accused’s submission that the identity of the witness was available to the public prior to the publication of the book. The Chamber was thus satisfied beyond a reasonable doubt that the accused knew he was disclosing information which identified three persons as protected witnesses before the Tribunal when he published the book, and that, therefore, he did so intentionally, with the knowledge that by doing so, he was violating Trial Chamber orders. Accordingly, the Chamber was satisfied beyond a reasonable doubt that the Accused was guilty of the offence of contempt pursuant to Rule 77(A)(ii) of the Rules.

In its determination of the sentence, the Chamber took into consideration the gravity of the offence, as well as the need for deterrence. In particular, the Chamber noted with grave concern the deliberate way in which the protective measure decisions imposed by the Šešelj Trial Chamber were defied. The Chamber considered this a serious interference with the administration of justice, particularly given the potential adverse impact of such conduct upon witnesses’ confidence in the Tribunal’s ability to guarantee the effectiveness of protective measures. Furthermore, the Chamber recognised the need to discourage this type of behaviour, and to take such steps as it could to ensure that there was no repetition of such conduct on the part of the accused or any other person.

On 24 July 2009, the Trial Chamber rendered its judgement, convicting Vojislav Šešelj of:

- Contempt of the Tribunal (Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal)

Sentence: 15 months’ imprisonment

APPEALS PROCEEDINGS

Vojislav Šešelj filed his notice of appeal confidentially on 18 August 2009.