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Mechanism for International Criminal Tribunals

Case No: MICT-16-99-A

Date: 22 February 2017

Original: English

IN THE APPEALS CHAMBER

Before:

**Judge Theodor Meron, Presiding
Judge Lee G. Muthoga
Judge Florence Rita Arrey
Judge Ben Emmerson
Judge Ivo Nelson de Caires Batista Rosa**

Registrar:

Mr. Olufemi Elias

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

PROSECUTION REPLY BRIEF

The Office of the Prosecutor:

Mr. Mathias Marcussen
Ms. Barbara Goy

The Accused:

Mr. Vojislav Šešelj

1. The case against Vojislav Šešelj matters. It concerns the criminal responsibility of a very senior politician of the former Yugoslavia and his alleged involvement in a devastating ethnic cleansing campaign against non-Serbs. Šešelj is alleged to have committed and contributed to the commission of numerous crimes. He was a member of a joint criminal enterprise—together with other senior political, military and police officials—to permanently and forcibly remove non-Serbs from large parts of Croatia and Bosnia and Herzegovina through the commission of serious crimes. He recruited, indoctrinated and deployed volunteers who participated in the ethnic cleansing of non-Serbs. In addition, he incessantly denigrated non-Serbs and instigated Serb forces to expel and commit other crimes against them.¹

2. It was the Trial Chamber's responsibility to adjudicate these serious allegations in a reasoned judgement. It failed to do so. The Prosecution's appeal demonstrates that the Judgement rendered is wholly inadequate: it lacks reasons for key findings; contains no discussion of large volumes of clearly relevant evidence; and misconstrues the Prosecution's core arguments in relation to Šešelj's criminal responsibility. In addition, the Prosecution's appeal demonstrates that no reasonable trier of fact could have reached the conclusion that Šešelj is not guilty of the crimes charged.

3. In his Response, Šešelj does not answer the Prosecution's appeal:

- He fails to appreciate that the Trial Chamber's failure to provide a reasoned opinion is an error of law² and does not meaningfully respond to the Prosecution's argument showing that the Majority's opinion lacks reasons.³
- He purports not to understand that the Prosecution's second ground of appeal is a logical alternative to its first ground of appeal⁴ and, instead of responding to the Prosecution's arguments, he merely repeats the Majority's erroneous findings.⁵
- He objects to the form of the Prosecution's appeal,⁶ although the Appeal Brief clearly sets out the arguments for the two grounds contained in the Prosecution's Notice of Appeal as well as the remedies requested.

¹ Indictment, paras.5-11.

² *Contra* Response, paras.7, 63, 333. See *Župljanin* AJ, para.142; *Simatović* AJ, paras.80, 90; *Kvočka* AJ, para.25.

³ *E.g.* Response, paras.9, 17, 31-32, 44, 50, 55, 66, 69, 71, 133, 140, 202, 358-360, 365, 374, 386.

⁴ Response, paras.55, 75, 84, 89.

⁵ Response, paras.71, 146-147, 149-153, 156, 159-160, 164-166, 168, 170, 174, 177-178, 181-183, 185-186, 188-190, 192-198, 203, 205.

- He repeats allegations that the Prosecution intimidated witnesses to give false testimony,⁷ which also do nothing to answer the Prosecution's appeal and were decisively rejected more than five years ago after a full investigation by an *amicus curiae*.⁸
- He repeats allegations of fair trial violations that the Trial and Appeals Chamber have already disposed of, most recently on 6 June 2014,⁹ and fails to demonstrate that the events since then resulted in any violation of his fair trial rights.

⁶ E.g. Response, paras.3-6, 23-26, 28, 38-39, 48, 57, 64-65, 79, 99, 104, 110, 112-123, 133-135, 142, 152, 297-298, 333.

⁷ E.g. Response, paras.46, 225, 302-303, 308, 319-321, 329, 332.

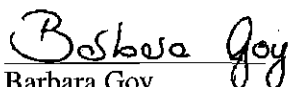
⁸ Šešelj Contempt Motion Decision (public).

⁹ 6 June 2014 Decision (public), paras.47-48 (finding that Šešelj "merely repeats on appeal arguments which the Trial Chamber already addressed, and that he fails to demonstrate any error by the Trial Chamber"), *affirming* 13 December 2013 Decision (public). *See also* 21 March 2012 Decision (public); 10 February 2010 Decision (public). The following constitutes a non-exhaustive list of decisions specifically addressing each of the alleged fair trial rights violations raised by Šešelj in his Response:

- Undue delay, Response, paras.17-18, 31, 55, 144, 211-212, 218, 224, 244, 249-252, 259-261, 264-272, 300-301, 306, 314-316, 324: 13 December 2013 Decision (public), paras.18-24; 21 March 2012 Decision (public), paras.87-92; 10 February 2010 Decision (public), paras.28-31.
- Insufficient notice due to lack of precision, confusion and changes in the charges over the course of the trial, Response, paras.145, 153, 184, 187, 215-217, 237, 259-260, 282-285, 314: 13 December 2013 Decision (public), paras.46-47; 21 March 2012 Decision (public), fn.205; 11 March 2008 Decision (public); 8 November 2006 Decision (public); 15 June 2006 Decision (public); 2 September 2004 Decision (public); 3 June 2004 Decision (public), para.47. In particular:
 - Use of the word "commit", Response, paras.146-147: 2 June 2005 Decision (public), para.10; 3 June 2004 Decision (public), para.51.
 - Cumulative/alternative charging of modes of liability, Response, paras.100-101: 27 November 2007 Decision (public), paras.64-67.
 - Not specifying which crimes are charged under which mode of liability, Response, paras.148-149: 27 November 2007 Decision (public), paras.61-66; 14 September 2007 Decision (public), para.40; 3 June 2004 Decision (public), para.47.
 - Inconsistent and ambiguous definition of the common purpose, Response, paras.150-151, 163, 185: 3 June 2004 Decision (public), paras.54-61.
 - Allegations concerning the Serbian Radical Party volunteers, Response, paras.152, 198: 3 June 2004 Decision (public), para.60.
 - Standard for indictment never met, Response, paras.126, 128: 21 March 2012 Decision (public), fn.205; 27 November 2007 Decision, paras.45-46.
- Self-representation, Response, paras.220-221, 229, 234-235, 266, 269-270, 278, 280, 291, 314: 13 December 2013 Decision (public), para.25; 21 March 2012 Decision (public), paras.5-19; 16 September 2008 Decision (public); 8 December 2006 Decision (public); 20 October 2006 Decision (public).
- Inadequate time and facilities to prepare a defence/inequality of arms, Response, paras.219, 273-274, 277, 281, 290-293, 389-393: 21 March 2012 Decision (public), paras.30-65; 24 January 2008 Decision (public). In particular:
 - Lack of defence funding and failure to register or enable him to choose legal advisors, Response, paras.221-222, 279-280, 289, 391-392: 21 March 2012 Decision (public), paras.30-65.
 - Late and deficient provision of the indictment and disclosure, including failure to provide material in Serbian, Response, paras.219, 226, 238-239, 266-270, 277-278, 286-288, 291, 314: 13 December 2013 Decision (public), paras.26-29; 21 March 2012 Decision (public), paras.20-29; 17 April 2007 Decision (public).
 - Detention conditions, including communication and visitor restrictions, Response, paras.219, 223, 241-242, 279-281, 291: 21 March 2012 Decision (public), paras.66-69.
- Admission of written witness evidence, Response, paras.154-155, 219, 226, 291: 13 December 2013 Decision (public), paras.30-36.

4. For the reasons set out in the Prosecution's Appeal Brief, the Appeals Chamber should grant the Prosecution's appeal and overturn the erroneous acquittals in the Judgement. Allowing the erroneous acquittals in this case to stand would be an affront to the victims of the crimes at issue and would jeopardise the integrity of the ICTY and MICT.

Word Count: 1,096



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Dated this 22nd day of February 2017
At The Hague, The Netherlands.

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- False testimony and Prosecution interference, Response, paras.45-46, 84, 136, 139, 177, 196, 225, 302-303, 308, 320-321, 329, 332, 341: 13 December 2013 Decision (public), paras.38-39; 10 February 2010 Decision (public), para.25 and the sources cited in fn.53.
 - Political indictment/prosecution, Response, paras.126, 166, 185, 196, 223, 228, 260, 299, 317-319, 322-323, 347, 354-356: 13 December 2013 Decision (public), para.45; 10 February 2010 Decision (public), para.24; 18 September 2008 Decision (public), para.29.

Prosecution's Glossary

Pleadings, Orders, Decisions etc. from Prosecutor v. Vojislav Šešelj

Abbreviation used in Prosecution Reply Brief	Full citation
3 June 2004 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67/PT, T.Ch., Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of Indictment, 3 June 2004 (public)
2 September 2004 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR72.1, App.Ch., Decision on the Interlocutory Appeal Concerning Jurisdiction, 2 September 2004 (public)
2 June 2005 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-PT, T.Ch., Decision on Prosecution's Motion for Leave to Amend the Indictment, 2 June 2005 (public)
15 June 2006 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR72.1, App.Ch., Decision on Motion for Reconsideration of the "Decision on the Interlocutory Appeal Concerning Jurisdiction" Dated 31 August 2004", 15 June 2006 (public)
20 October 2006 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR73.3, App.Ch., Decision on Appeal Against the Trial Chamber's Decision on Assignment of Counsel, 20 October 2006 (public)
8 November 2006 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-PT, T.Ch., Decision on the Application of Rule 73 bis, 8 November 2006 (public)
8 December 2006 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR73.4, App.Ch., Decision on Appeal Against the Trial Chamber's Decision (No.2) on Assignment of Counsel, 8 December 2006 (public)
17 April 2007 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR73.5, App.Ch., Decision on Vojislav Šešelj's Interlocutory Appeal Against the Trial Chamber's Decision on Form of Disclosure, 17 April 2007 (public)
14 September 2007 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-PT, T.Ch., Decision on Prosecution's Motion for Leave to File an Amended Indictment, 14 September 2007 (public)

27 November 2007 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-T, T.Ch., Decision on Preliminary Motion Filed by the Accused, 27 November 2007 (English translation filed on 16 March 2009) (public)
24 January 2008 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR73.6, App.Ch., Decision on Vojislav Šešelj's Appeal Against the Trial Chamber's Oral Decision of 7 November 2007, 24 January 2008 (public)
11 March 2008 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR73.7, App.Ch., Decision on Appeal Against the Trial Chamber's Oral Decision of 9 January 2008, 11 March 2008 (public)
16 September 2008 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR73.8, App.Ch., Decision on Prosecution's Appeal Against the Trial Chamber's Order Regarding the Resumption of Proceedings, 16 September 2008 (public)
18 September 2008 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-T, T.Ch., Decision on Motion by the Accused to Dismiss all Charges Against Him (Submission 387) and its Addendum (Submission 391), 18 September 2008 (English translation filed on 29 September 2008) (public)
10 February 2010 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-T, T.Ch., Decision on Oral Request of the Accused for Abuse of Process, 10 February 2010 (English translation filed on 19 February 2010) (public)
21 March 2012 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-T, T.Ch., Decision on Accused's Claim for Damages on Account of Alleged Violations of His Elementary Rights During Provisional Detention, 21 March 2012 (English translation filed on 16 April 2012) (public)
13 December 2013 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-T, T.Ch., Decision on Continuation of Proceedings, 13 December 2013 (English translation filed on 23 December 2013) (public)
6 June 2014 Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-AR15bis, App.Ch., Decision on Appeal Against Decision on Continuation of Proceedings, 6 June 2014 (public)
Appeal Brief	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. MICT-16-99-A, Prosecution Appeal Brief, 18 July 2016 (public redacted with public annex)
Indictment	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67, Third Amended Indictment, 7 December 2007 (public)

Judgement	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-T, T.Ch., Judgement, 31 March 2016 (English translation filed on 14 June 2016) (public)
Notice of Appeal	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. MICT-16-99-A, Prosecution's Notice of Appeal, 2 May 2016 (public)
Response	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. MICT-16-99-A, Profes[s]or Vojislav Šešelj's Respondent's Brief, 19 December 2016 (English translation filed 7 February 2017) (public)
Šešelj Contempt Motion Decision	<i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67-T, T.Ch., Decision on Vojislav Šešelj's Motion for Contempt Against Carla del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon and on the Subsequent Requests of the Prosecution, 22 December 2011 (English translation filed on 14 February 2012) (public)
Trial Chamber	Trial Chamber in <i>Prosecutor v. Vojislav Šešelj</i> , Case No. IT-03-67

Other ICTY authorities

Abbreviation used in Prosecution Reply Brief	Full citation
<i>Kvočka</i> AJ	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić & Dragoljub Prcać</i> , Case No. IT-98-30/1-A, App.Ch., Judgement, 28 February 2005 (public)
<i>Simatović</i> AJ	<i>Prosecutor v. Jovica Stanišić & Franko Simatović</i> , Case No. IT-03-69-A, App.Ch., Judgement, 9 December 2015 (public)
<i>Župljanin</i> AJ	<i>Prosecutor v. Mićo Stanišić & Stojan Župljanin</i> , Case No. IT-08-91-A, App.Ch., Judgement, 30 June 2016 (public with confidential Annex C)

Other Abbreviations

Abbreviation used in Prosecution Reply Brief	Full citation
Croatia	Republic of Croatia
fn.	footnote
ICTY	International Criminal Tribunal for the former Yugoslavia
Majority	Judge Jean-Claude Antonetti, presiding, and Judge Mandiaye Niang
MICT	Mechanism for International Criminal Tribunals
para.	paragraph
paras.	paragraphs