

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-16-99

Date: 27 November 2018

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

Decision of: 27 November 2018

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON REQUEST TO BE ALLOWED TO EXERCISE
THE RIGHT TO APPEAL AND TO HAVE A DEADLINE SET
FOR THE NOTICE OF APPEAL**

The Office of the Prosecutor:

Mr. Serge Brammertz
Mr. Mathias Marcussen
Ms. Barbara Goy

The Applicant:

Mr. Vojislav Šešelj, *pro se*

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism”, respectively) is seised of the “Request of Prof. Vojislav Šešelj to be Allowed to Exercise the Right to Appeal and to Have a Deadline Set for the Notice of Appeal”, filed before the President of the Mechanism (“President”) on 28 August 2018 (“Request”).¹ The Prosecution responded to the Request on 4 September 2018.² On 12 September 2018, the President assigned the Appeals Chamber to consider the Request.³ Vojislav Šešelj replied to the Prosecution’s Response on 27 September 2018.⁴

I. BACKGROUND

2. In an indictment dated 7 December 2007, the Prosecution charged Šešelj with persecution, deportation, and other inhumane acts (forcible transfer) as crimes against humanity (Counts 1, 10, and 11, respectively), as well as murder, torture, cruel treatment, wanton destruction of villages, destruction or wilful damage to institutions dedicated to religion or education, and plunder of public or private property as violations of the laws or customs of war (Counts 4, 8, 9, 12, 13, and 14, respectively).⁵ The Prosecution alleged that Šešelj planned, ordered, instigated, committed, or otherwise aided and abetted these crimes.⁶ On 31 March 2016, Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia (“Trial Chamber” and “ICTY”, respectively), by a majority, acquitted Šešelj of all charges.⁷

3. On 11 April 2018, the Appeals Chamber rendered its judgement, in which it found, *inter alia*, that the Trial Chamber erred in not holding Šešelj criminally responsible for a speech he gave in Hrtkovci, Vojvodina (Serbia) on 6 May 1992 calling for the expulsion of the non-Serbian population, as well as for the subsequent violence and intimidation that led to their departure from the area.⁸ The Appeals Chamber accordingly reversed Šešelj’s acquittal, in part, and entered

¹ Original Bosnian/Croatian/Serbian (“B/C/S”) version filed on 15 August 2018.

² Prosecution Response to Šešelj’s Request to be Allowed to Exercise the Right to Appeal and to Have a Deadline Set for the Notice of Appeal, 4 September 2018 (“Response”).

³ Order Assigning Judges to a Case Before the Appeals Chamber, 12 September 2018.

⁴ Prof. Vojislav Šešelj’s Reply to the Prosecution Response to Šešelj’s Request to be Allowed to Exercise the Right to Appeal and to Have a Deadline Set for the Notice of Appeal, 27 September 2018 (“Reply”) (B/C/S version filed on 20 September 2018).

⁵ *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Third Amended Indictment, 7 December 2007 (“Indictment”), paras. 15-34.

⁶ Indictment, paras. 5-11, 15, 18, 28, 31, 34. *See also* *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Judgement, 14 June 2016 (original French version filed on 31 March 2016) (“Trial Judgement”), paras. 2, 4, 5, 7, 221.

⁷ Trial Judgement, pp. 109, 110. *See also* Trial Judgement, Individual Statement of Judge Mandiaye Niang, 14 June 2016 (original French version filed on 31 March 2016); Concurring Opinion of Presiding Judge Jean-Claude Antonetti Attached to the Judgement, 16 September 2016 (original French version filed on 31 March 2016); Partially Dissenting Opinion of Judge Flavia Lattanzi – Amended Version, 1 July 2016 (original amended French version filed on 12 April 2016).

⁸ *Prosecutor v. Vojislav Šešelj*, Case No. MICT-16-99-A, Judgement, 11 April 2018 (“Appeal Judgement”), paras. 142-166.

convictions under Counts 1, 10, and 11 of the Indictment for instigating deportation, persecution (forcible displacement), and other inhumane acts (forcible transfers) as crimes against humanity, as well as for committing persecution, based on a violation of the right to security, as a crime against humanity.⁹ The Appeals Chamber sentenced Šešelj to 10 years of imprisonment, and, in accordance with Rule 125(C) of the Rules of Procedure and Evidence of the Mechanism (“Rules”), declared his sentence served in view of the credit given for his detention in the custody of the ICTY pending trial.¹⁰

4. Šešelj now seeks leave to appeal the Appeal Judgement.¹¹

II. SUBMISSIONS

5. In his Request, Šešelj submits that the Appeals Chamber erred in reversing his acquittal at trial, as its only options were to either confirm the Trial Judgement or to quash it and return the case for retrial.¹² He contends that, because the Appeals Chamber convicted him of crimes for the first time, he must be allowed to exercise his fundamental right to appeal against the Appeal Judgement.¹³ He argues that a failure to grant this right would amount to the gravest possible violation of guaranteed and internationally recognised human and procedural rights.¹⁴ Šešelj accordingly requests to be granted the right to file an appeal against the Appeal Judgement and that a deadline be set for his notice of appeal.¹⁵

6. The Prosecution responds that the Request should be denied since the Statute of the Mechanism (“Statute”) does not provide for the right to a second appeal, and because Šešelj offers no cogent reasons to depart from the Appeals Chamber’s consistent position that convicting on appeal does not, *per se*, violate a respondent’s fair trial rights.¹⁶

III. DISCUSSION

7. Article 23 of the Statute provides that the Appeals Chamber “shall hear appeals from convicted persons or from the Prosecutor” and “may affirm, reverse or revise” the Trial Chamber’s decisions or judgements. Contrary to Šešelj’s submission that the Appeals Chamber erred in

⁹ Appeal Judgement, paras. 155, 165, 166, 181.

¹⁰ Appeal Judgement, paras. 180, 181.

¹¹ Request, pp. 2-8; Reply, pp. 2-5.

¹² Request, pp. 3-7; Reply, p. 3.

¹³ Request, pp. 3-8; Reply, pp. 3-5.

¹⁴ Request, pp. 3, 4, 7; Reply, pp. 3, 4.

¹⁵ Request, pp. 2, 8; Reply, p. 2, 4, 5.

¹⁶ Response, paras. 1-5.

reversing his acquittal, it is established jurisprudence that the Appeals Chamber may enter new convictions when issuing its final judgement.¹⁷

8. The Appeals Chamber notes that Article 14(5) of the International Covenant on Civil and Political Rights guarantees that “[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”.¹⁸ However, neither the Statute nor the Rules provide a legal framework for this avenue of relief where a conviction is entered at the appellate stage.¹⁹ Instead, Article 24 of the Statute and Rule 146 of the Rules offer a convicted person the ability to seek a review of an appeal judgement on fulfilment of certain criteria, which have been interpreted broadly where a miscarriage of justice would otherwise result.²⁰ By way of example, a conviction entered on appeal against Veselin Šljivančanin was subsequently vacated in review proceedings, when Šljivančanin demonstrated that the finding on which his conviction relied was untenable.²¹

9. The ICTY Appeals Chamber has previously stated that it was “satisfied that the existing appeal and review proceedings established under the Statute provide sufficient guarantees to persons convicted before this Tribunal that they have been tried fairly and in accordance with norms of due process”.²² Notably, Šešelj limits his arguments to the impropriety of being convicted on appeal and to asserting his consequent right to appeal. He makes these arguments, however, without articulating any deficiencies in the existing procedures for review of appeal judgements

¹⁷ See, e.g., *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-A, Judgement, 30 January 2015 (“*Popović et al.* Appeal Judgement”), paras. 539, 2117; *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, Judgement, 27 January 2014 (“*Đorđević* Appeal Judgement”), paras. 928, 981; *Jean-Baptiste Gatete v. The Prosecutor*, Case No. ICTR-00-61-A, Judgement, 9 October 2012 (“*Gatete* Appeal Judgement”), paras. 265, 288.

¹⁸ See United Nations General Assembly, International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966, entered into force on 23 March 1976, United Nations Treaty Series, Volume 999 (“ICCPR”), p. 177. The Human Rights Committee has clarified that Article 14(5) of the ICCPR also extends to convictions entered on appeal. See United Nations Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, CCPR/C/GC/32, para. 47.

¹⁹ Appeals Chamber jurisprudence at the ICTY and the International Criminal Tribunal for Rwanda similarly do not provide for the possibility to appeal an appeal judgement. This is demonstrated in decisions establishing that, since the Statute only provides for a right of appeal and a right of review, the Appeals Chamber has no power to reconsider its final judgement as an avenue to seek a further appeal. See, e.g., *Ferdinand Nahimana v. The Prosecutor*, Case No. ICTR-99-52B-R, Decision on Ferdinand Nahimana’s Motion for Reconsideration of the Appeal Judgement, 30 June 2010, para. 6; *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Decision on Motion on Behalf of Veselin Šljivančanin Seeking Reconsideration of the Judgement Rendered by the Appeals Chamber on 5 May 2009 – or an Alternative Remedy, 8 December 2009 (“*Šljivančanin* Decision”), p. 2, n. 7, referring to, *inter alia*, *Prosecutor v. Zoran Žigić*, Case No. IT-98-30/1-A, Decision on Zoran Žigić’s “Motion for Reconsideration of Appeals Chamber Judgement IT-98-30/1-A Delivered on 28 February 2005”, 26 June 2006 (“*Žigić* Decision”), para. 9.

²⁰ See *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1-R.1, Review Judgement, 8 December 2010 (“*Šljivančanin* Review Judgement”), para. 7; *Žigić* Decision, para. 7, and references cited therein.

²¹ See *Šljivančanin* Review Judgement, paras. 32, 37.


²² See *Žigić* Decision, para. 9. See also *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-R, Decision on Prosecutor’s Request for Review or Reconsideration, 23 November 2006 (public redacted version), para. 79.

provided for in the Statute and the Rules or even attempting to demonstrate that the Appeal Judgement contains any errors. In these circumstances, his arguments stand to be rejected.

10. For the foregoing reasons, the Appeals Chamber hereby **DENIES** the Request.

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

Done this 27th day of November 2018,
At The Hague,
The Netherlands



Judge Theodor Meron, Presiding

[Seal of the Mechanism]



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