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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-PT

Date: 2 October 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Patrick Robinson
Judge Bakone Justice Moloto

Registrar: Mr Hans Holthuis

Decision of: 2 October 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON PROSECUTION'S MOTION CONCERNING FILING OF AN
EXPERT REPORT, WITH CONFIDENTIAL AND EX PARTE ANNEXES**

Office of the Prosecutor

Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemeier

Counsel for Vojislav Šešelj

Mr David Hooper
Mr Andreas O'Shea

TRIAL CHAMBER I of the International Tribunal;

BEING SEISED OF the confidential “Prosecution’s Motion Concerning the Filing of an Expert Report, with Confidential and Ex Parte Annexes”, dated 28 March 2006, in which the Prosecution requests the Trial Chamber to order that:

- (i) the disclosure of portions of the Expert Report by Reynaud Theunens¹ that are designated by the Prosecution as “Sensitive Portions of the Report” and materials that are designated “Sensitive Source Materials”² be delayed until no later than 30 days before the date set for the commencement of the trial;
- (ii) the Prosecution meanwhile disclose to the Defence the Expert Report with the Sensitive Portions of the Report redacted;³
- (iii) the Sensitive Portions of the Report and the Sensitive Source Materials shall not be disclosed to the public after their disclosure to the Defence;
- (iv) should the Trial Chamber decide to admit the Expert Report into evidence at trial, the unredacted version of the Expert Report shall be filed under seal, and only the redacted version shall be publicly available;⁴

NOTING that in support of its request regarding delayed disclosure, the Prosecution submits that given the “clear and direct link” existing between the disclosure of the Sensitive Portions of the Report and the Sensitive Source Materials, on the one hand, and the safety of the protected witnesses with which the motion is concerned, on the other, this material should be treated as information identifying the protected witnesses;⁵

NOTING that the Prosecution argues that if the redacted portions of the Expert Report were disclosed to the public, “the protected witnesses in question would immediately come under suspicion by the Accused’s supporters as the providers of materials and potential witnesses for the Prosecution”;⁶

NOTING Defence lead-counsel’s response to the motion, made orally at a status conference held on 14 September 2006, that he does not oppose the motion;⁷

¹ The unredacted version of the Expert Report is attached to the Motion in the confidential and ex parte Annex I.

² Confidential and ex parte Annex III to the Motion enumerates the Sensitive Source Materials.

³ The redacted version of the Expert Report is attached to the Motion in the confidential and ex parte Annex II.

⁴ Motion, para. 3.

⁵ Motion, paras 5, 7-9.

⁶ Motion, paras 11-13.

⁷ T. 568-626, 622, 14 September 2006.

CONSIDERING the scheduling order dated 18 September 2006, setting 2 November 2006 as the date of commencement of the trial, which as of today's date renders moot the first of the Prosecution's above requests;

CONSIDERING that under Rule 53(A) of the Tribunal's Rules of Procedure and Evidence a Trial Chamber may, in exceptional circumstances and in the interests of justice, order the non-disclosure to the public of any documents or information until further order;

CONSIDERING that the Trial Chamber has an obligation to strike a fair balance between, on the one hand, the right of the public to have access to information and, on the other hand, the protection of witnesses, and that the Prosecution must demonstrate the existence of a risk to the safety and security of those witnesses, should it become known that they will give evidence in the present case;⁸

FINDING that, in light of the material provided by the Prosecution,⁹ the protected witnesses could be identified from the Sensitive Portions of the Report or the Sensitive Source Materials, and that the Prosecution's fear for the safety and security of the protected witnesses and their families is genuine;

CONSIDERING that exceptional circumstances warrant the non-disclosure to the public of the Sensitive Portions of the Report and the Sensitive Source Materials after their disclosure to the Defence until further order;

FOR THE FOREGOING REASONS,

The Trial Chamber hereby **GRANTS** the motion in part, and **ORDERS** that:

- (a) the full Expert Report be immediately disclosed to the Defence;
- (b) The Sensitive Portions of the Expert Report and the Sensitive Source Materials shall not be disclosed to the public until further order;

The Trial Chamber defers the Prosecution's request relating to the admission under seal of parts of the Expert Report until an appropriate time in the future.

⁸ See, for example, *Prosecutor v. Milutinović et al.*, Decision on Prosecution's Sixth Motion for Protective Measures, 1 June 2006, para. 21; *Prosecutor v. Mrškić et al.*, Decision on Confidential Prosecution Motion for Protective Measures and Non-Disclosure and Confidential Annex A, 9 March 2005, pp. 4 and 5; 8 December 2005 Decision, pp. 3-4.

⁹ Confidential and ex parte Annex IV to the Motion.

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



Judge Alphons Orie
Presiding Judge

Dated this 2nd day of October 2006
The Hague
The Netherlands

[Seal of the Tribunal]