



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: 14 June 2007

Original: ENGLISH
French

BEFORE THE PRE-TRIAL JUDGE

Before: Judge Jean-Claude Antonetti

Registrar: Mr Hans Holthuis

Decision of: 14 June 2007

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON THE RE-EXAMINATION OF THE DECISION OF
TRIAL CHAMBER I OF 2 OCTOBER 2006
(MOTION NO. 286)**

The Office of the Prosecutor:

Ms Christine Dahl

The Accused:

Mr Vojislav Šešelj

I, Jean-Claude Antonetti, Judge of the 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 (“Tribunal”);

BEING SEIZED of the motion of Vojislav Šešelj (“Accused”) for Re-examination of the Decision of Trial Chamber I (“Chamber I”) of 2 October 2006 (“Decision of 2 October”), filed on 9 May 2007 (“Motion”);¹

NOTING the confidential response of the Office of the Prosecutor (“Prosecution”) of 23 May 2007 (“Response”);²

NOTING the “Prosecution Motion for Re-examination of its Confidential Motion on the Filing of an Expert Report,” filed confidentially on 23 May 2007 (“Prosecution Motion”);

CONSIDERING that the Accused has requested that he be given the complete Expert Report drafted by Reynaud Theunens (“Theunens Report”), including the passages redacted in advance by the Prosecution on the grounds that they would have identified the three so-called sensitive witnesses (“Sensitive Passages” and “Sensitive Witnesses”), in order to provide his opinion about the said report pursuant to Rule 94*bis* of the Rules of Procedure and Evidence (“Rules”);³

CONSIDERING that the Prosecution opposes the Motion on the grounds that disclosing to the Accused the Theunens Report in its entirety, including the Sensitive Passages and a number of documents also regarded as “sensitive,” would reveal the identity of the Sensitive Witnesses, and because the redacted version of the Theunens Report already permits the Accused to formulate his position in accordance with Rule 94*bis* of the Rules;⁴

CONSIDERING that the Prosecution had initially filed a motion on 28 March 2006 requesting disclosure of sensitive passages and documents from the Theunens Report no later than thirty days before the commencement of the trial,⁵ and during a status conference of 14 September 2006, the Standby Counsel stated that he was not opposed to that motion;⁶

CONSIDERING that in its Decision of 2 October, Chamber I stated that the issue of the late disclosure of the Theunens Report in his entirety was moot since, at the time of the decision, it was already foreseen that the trial would begin within the following 30 days;⁷

¹ English translation of the BCS original entitled “Professor Vojislav Šešelj’s Motion for Re-examination of the Decision of Trial Chamber I of 2 October 2006”, submitted on 25 April 2007 and filed on 9 May 2007.

² “Prosecution’s Response to Accused’s Motion for Re-examination of the Decision of Trial Chamber I of 2 October 2006”, filed confidentially on 23 May 2007.

³ Motion, pp. 4-5.

⁴ Response, paras. 7, 10.

⁵ English original entitled “Confidential Prosecution’s Motion Concerning Filing of an Expert Report, with Confidential and *Ex Parte* Annexes,” filed on 28 March 2006.

⁶ Status conference of 14 September 2006, transcript in French (“T(F)”), p. 622.

⁷ “Decision on Prosecution’s Motion Concerning Filing of an Expert Report, with Confidential and *Ex Parte* Annexes, filed on 2 October 2006.

CONSIDERING that on 18 December 2006, in its Decision on the Status of Decisions Issued and Pending Motions, Chamber I ordered that the time-limit for filing a request for certification to appeal the Decision of 2 October would begin to run as from the moment the Accused would again be in a position to take part in the trial;⁸

CONSIDERING that the Prosecution states that on 17 May 2007⁹ it disclosed the Theunens Report to the Accused in a redacted form and in a language he understands, and that during the status conference of 22 May 2007, the Accused confirmed that he had received the said report;¹⁰

CONSIDERING that pursuant to Rule 94*bis* of the Rules,

(A) The full statement and/or report of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge.

(B) Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:

(i) it accepts the expert witness statement and/or report; or

(ii) it wishes to cross-examine the expert witness; and

(iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the statement and/or report and, if so, which parts.

(C) If the opposing party accepts the statement and/or report of the expert witness, the statement and/or report may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

CONSIDERING that Rule 94*bis* must be interpreted in the light of obligations incumbent upon the Trial Chamber, here in the person of the pre-trial Judge, to ensure that due regard is given for the protection of witnesses in accordance with Article 20(1) of the Statute of the Tribunal (“Statute”);¹¹

CONSIDERING in addition that the sensitive Witnesses are currently subject to protective measures enabling their identity to be disclosed to the Accused no later than 30 days before the commencement of the trial;¹²

⁸ “Decision on the Status of Decisions Issued and Pending Motions,” dated 18 December 2006 and filed on 5 January 2007, para. 10.

⁹ Response, para. 3; Prosecution Motion, para. 2.

¹⁰ Status conference of 22 May 2007, T(F), p. 1165.

¹¹ Article 20(1) of the Statute provides that “the Trial Chamber shall ensure that... proceedings are conducted... with due regard for the protection of victims and witnesses.”

¹² Decision on the Prosecution Motion on Protective Measures for Witnesses during Pre-Trial Proceedings, filed confidentially with Confidential and *Ex Parte* Annex A, 16 December 2004 (French translation 12 January 2005); Decision on Prosecution’s Third and Fourth Motion For Protective Measures for Witnesses during the Pre-Trial Phase with Confidential and *Ex Parte* Annex, 27 May 2005.

CONSIDERING that Chamber I decided that the identity of the Sensitive Witnesses could be revealed by the disclosure of Sensitive Passages from the Theunens Report and sensitive documents related thereto, and that, in addition, the fears expressed by the Prosecution as regards the safety of the Sensitive Witnesses and their families were real,¹³

CONSIDERING that nothing before the pre-trial Judge at this stage of the proceedings would seem to justify adopting a different position from that of Chamber I:

CONSIDERING that the sole issue currently pending before the pre-trial Judge is whether the disclosure of the redacted Theunens Report enables the Accused to formulate a response thereto, by indicting in accordance with Rule 94*bis* of the Rules whether: (i) he accepts the Theunens Report; (ii) he wishes to cross-examine Reynaud Theunens; and (iii) he challenges his qualifications as an expert or the relevance of all or part of the Theunens Report, and, if so, which parts;

CONSIDERING that on 5 June 2007, the Accused made an oral objection in principle to the Theunens Report, stating that he wished to "challenge" it¹⁴ and that the "challenge" responds to the questions set out in Rule 94*bis* (B) (i) and (ii);

FOR THE FOREGOING REASONS

PURSUANT TO Article 20(1) of the Statute and Rules 69, 75 and 94*bis* of the Rules,

DISMISS the Motion and

ORDER

i) that the Prosecution disclose the unredacted version of the Theunens Report to the Accused no later than 30 days before the definitive date of the commencement of the trial;

ii) that, no later than 14 days after receiving the present decision in a language he understands, the Accused supplement his oral objection to the Theunens Report by way of a written response, indicating whether or not he challenges Reynaud Theunens' qualification as an expert and the relevance of all or parts of the Theunens Report, and if so, which parts;

iii) that, if he so wishes, the Accused may file a supplementary response in accordance with Rule 94*bis* of the Rules no later than 14 days after receiving the Theunens Report in its entirety in a language he understands, this response dealing strictly with the Sensitive Passages;

¹³ Decision of 2 October, p. 3.

¹⁴ Status conference of 5 June 2007, T. 1230: "Surely enough, I am going to be challenging all the OTP experts including Theunens but in order for me to formally state my position as to why I am challenging a certain witness, I must have the report in its entirety. I will be challenging the report, that much is certain, but my deadline will start running from the day I receive a report in its entirety."

iv) that the Prosecution organized the order of witnesses it intends to call to allow the Accused sufficient time to prepare his cross-examination of Reynaud Theunens.

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

/signed/
Jean-Claude Antonetti
Pre-Trial Judge

Done this fourteenth day of June 2007
At The Hague
The Netherlands

[Seal of the Tribunal]