



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: 20 September 2007

ENGLISH

Original: French

BEFORE THE PRE-TRIAL JUDGE

Before: Judge Jean-Claude Antonetti

Registrar: Mr Hans Holthuis

Decision of: 20 September 2007

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON SUBMISSION NUMBER 311 REQUESTING THAT
CHAMBER III CLARIFY THE PROSECUTION'S PRE-TRIAL BRIEF**

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”);

SEIZED of Submission No. 311 of Vojislav Šešelj (“Accused”) requesting that Trial Chamber III (“Chamber III”) clarify the Prosecution’s pre-trial brief, dated 15 August 2007 and filed on 28 August 2007 (“Submission”);¹

NOTING the response filed by the Office of the Prosecutor (“Prosecution”) on 11 September 2007 (“Response”);²

CONSIDERING that the Accused requests Chamber III to clarify the reasons why the offences charged for Voćin, Brčko, Bijeljina and Bosanki Šamac municipalities remain in the final version of the pre-trial brief of 25 June 2007 (“Pre-Trial Brief”),³ even though they were removed from the modified amended indictment following the “Decision on the Application of Rule 73 *bis*” rendered by Trial Chamber I (“Chamber I”) on 8 November 2006 (“Indictment”⁴ and “Decision”,⁵ respectively);

CONSIDERING that the Accused submits that if the Pre-Trial Brief is not compatible with and contradicts the Indictment, it must be concluded that the Prosecution did not comply with the Decision;⁶

CONSIDERING that the Accused criticizes the Prosecution for having referred in its Pre-Trial Brief to paragraph 28 of the Decision rather than to its disposition, when only the disposition is binding,⁷

¹ Professor Vojislav Šešelj’s Submission Requesting that Trial Chamber III Clarify the Prosecution’s Final Pre-Trial Brief in Light of Pre-Trial Chamber Decisions, dated 15 August 2007 and filed on 28 August 2007.

² Prosecution’s Response to Accused’s Submission No. 311, 11 September 2007.

³ Prosecution’s Final Pre-Trial Brief, confidential, 25 June 2007.

⁴ Prosecution’s Submission of Reduced Modified Amended Indictment with Redactions Removed, 30 March 2007.

⁵ Decision on the Application of Rule 73 *bis*, 8 November 2006.

⁶ Submission, pp. 4-6.

⁷ Submission, p. 4.

CONSIDERING furthermore that the Accused requests a suspension of the one-month time-limit he had, following the status conference of 2 May 2007,⁸ to respond to the Pre-Trial Brief pursuant to Rule 65 *ter* (F) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), and requests that the time-limit resume running as of the date of receipt of the translation of the present decision into a language he understands;⁹

CONSIDERING on the contrary that the Prosecution recalls that it specified in paragraph 63 of its Pre-Trial Brief that, in accordance with the Decision, it was no longer seeking to establish the commission of crimes in the following sites: Western Slavonia, Brčko, Bijeljina, Bosanski Šamac and Boračko Jezero/Mt. Boražnica, Nevesinje municipality (“Redacted Municipalities”);¹⁰

CONSIDERING that the Prosecution opposes the Submission on the ground that the Decision is sufficiently explicit in that it authorizes the Prosecution to present certain non-crime base evidence dealing with the Redacted Municipalities;¹¹

CONSIDERING furthermore that the Prosecution requests that the extension of time-limit requested by the Accused be denied, and that a deadline be set by which the Accused must file his submissions pursuant to Rule 65 *ter* (F) of the Rules, not less than three weeks before the commencement of the trial;

CONSIDERING that the pre-trial Judge considers that the disposition of the Decision is set out in a clear and unequivocal manner, and restates the reasoning of Chamber I presented in the body of the Decision, in particular in paragraph 28, ordering that:

- (b) The Prosecution shall not present evidence in respect of crimes allegedly committed in the crime sites of Western Slavonia, Brčko, Bijeljina, Bosanski Šamac (...);

⁸ Status conference of 2 May 2007, Transcript in French (“T(F)”) p. 1124.

⁹ Submission, p. 6.

¹⁰ Response, para. 7.

¹¹ Response, para. 6.

(c) The Prosecution may present non-crime-base evidence in respect of the crime sites of Western Slavonia, Brčko, Bijeljina, Bosanski Šamac (...);¹²

CONSIDERING furthermore that by the expression “non-crime-base evidence” the Decision designates:

[...] pattern evidence and evidence that goes to proof of the purpose and methods of the joint criminal enterprise charged in the Indictment, proof of the degree of co-ordination and co-operation of individuals and institutions that are allegedly part of the joint criminal enterprise, communication, training and transfer of volunteers and the involvement in such of the Accused, knowledge of the Accused of the conduct of the volunteers, and the general elements of the persecution campaign in Croatia as charged in Count 1 of the Indictment.¹³

CONSIDERING that in this case the Indictment complies with the Decision in that it no longer seeks to establish the commission of crimes committed in the Redacted Municipalities, while maintaining the reference to these sites in paragraph 10 (e) dealing with the Accused’s participation in the joint criminal enterprise;

CONSIDERING that pursuant to Rule 65 *ter* (E) (i) of the Rules, it appears that the pre-trial brief is a complementary document whose main function is to present, for each count, the evidence the Prosecution intends to put forth about the commission of the alleged crime and the type of responsibility incurred by the Accused, but shall by no means charge the said Accused with crimes that are not charged against him in the Indictment and that, furthermore, the pre-trial brief contains footnotes referring specifically to documents which are not mentioned in the Indictment;

CONSIDERING nevertheless that the evidence concerning crimes which are not mentioned in the Indictment remain admissible in order to corroborate other evidence which will allow the Prosecution to establish a consistent pattern of conduct under

¹² Decision, para. 33.

¹³ Decision, para. 17.

Rule 93 (A) of the Rules, provided that that Accused has been clearly informed of its intentions;¹⁴

CONSIDERING that from paragraph 63 of the Pre-Trial Brief it is clear that the Prosecution, in accordance with the Decision, no longer seeks to establish the commission of crimes in the Redacted Municipalities and will only present evidence concerning the said municipalities in order to establish the existence and scope of the joint criminal enterprise and the participation of the Accused, through the demonstration of a consistent pattern of conduct;

CONSIDERING that in this case the Pre-Trial Brief informs the Accused in a detailed manner of the evidence which will be put forth in respect of the consistent pattern of conduct, thereby complying with the requirements of Rule 65 *ter* (E) (i) of the Rules;

CONSIDERING furthermore that following the oral decision of the pre-trial Judge dated 2 May 2007 the Accused, who received the translation of the Pre-Trial Brief in a language he understands on 10 August 2007, should have filed his submissions under Rule 65 *ter* (F) before 10 September 2007;

CONSIDERING nevertheless that, in view of the uncertainties caused by the pending nature of the Motion to date, it would be desirable to extend the time-limit for the Accused to present his submissions to 16 October 2007;

FOR THE FOREGOING REASONS

PURSUANT TO Article 18 (4) of the Statute and Rules 54, 65 *ter* (E) (i) and 65 *ter* (F) of the Rules,

¹⁴ *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-PT, Decision on the Defence Motion for Indicating that the First and Second Schedule to the Indictment Dated 10th October 2001 Should Be Considered as the Amended Indictment, 19 October 2001, para. 23.

DENY the Submission and **ORDER** the Accused to file, no later than 16 October 2007, his submissions pursuant to Rule 65 *ter* (F) of the Rules addressing factual and legal issues, and including a written statement setting out:

- (i) in general terms, the nature of his defence;
- (ii) the matters in the Pre-Trial Brief with which he takes issue; and
- (iii) in the case of each such matter, the reason why he takes issue with it.

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

/signed/

Jean-Claude Antonetti

Pre-Trial Judge

Done this twentieth day of September 2007

At The Hague

The Netherlands

[Seal of the Tribunal]