



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-T
Date: 23 April 2008
Original: English

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr. Hans Holthuis

Decision of: 23 April 2008

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S MOTION FOR LEAVE TO ADD A
MILITARY INSIGNIA PATCH BOOK TO ITS RULE 65TER LIST**

Office of the Prosecutor

Mr. Daryl Mundis

The Accused

Mr. Vojislav Šešelj

TRIAL CHAMBER III (“Trial Chamber”) 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 SEISED OF the “Prosecution’s Motion for Leave to Add a Military Insignia Patch Book to its Rule 65*ter* List” filed on 8 April 2008 (“Motion”),¹ in which the Prosecution seeks leave to add to its Rule 65*ter*(E)(iii) exhibit list (“Rule 65*ter* List”)² a compilation of military insignia and patches (“Military Insignia Patch Book”);³

NOTING that the Prosecution argues that the Military Insignia Patch Book is relevant to paragraphs 5 through 11 of the Indictment and all counts therein⁴ “in that it provides photographs of nearly all patches and insignia worn by the military, police and paramilitary actors referenced in the Indictment, including volunteers connected to the Serbian Radical Party (SRS) and/or the Serbian Chetnik Movement (SČP)”;⁵

NOTING that the Prosecution contends that the rights of the Accused will not be prejudiced by granting the Motion given that many of the insignia and patches in the Military Insignia Patch Book were among the proposed exhibits on the Rule 65*ter* List,⁶ and that it anticipates it will not rely on the Military Insignia Patch Book until one month from the date of the Motion;⁷

NOTING that the Prosecution submits that the Military Insignia Patch Book does not appear on the Rule 65*ter* List, though many of its constituent insignia and patches do, as a result of the time

¹ The Motion is dated 7 April 2008.

² Prosecution Notice of Filing Exhibit List Pursuant to Rule 65*ter*, with confidential and *ex parte* annex, 25 June 2007.

³ The Military Insignia Patch Book bears the following ERN number: 0632-3406 - 0632-3531.

⁴ Third Amended Indictment, 7 December 2007.

⁵ Motion, para. 5.

⁶ Motion, para. 6[*bis*]. The Trial Chamber notes that while the Prosecution claims that 21 of the 85 insignia and patches in the Military Insignia Patch Book were among the proposed exhibits on the Rule 65*ter* List, only 13 of these are accurately cited in the Motion (ERN number 0632-3410 (with corresponding 65*ter* number 4,094), ERN number 0632-3411 (65*ter* number 4,210), ERN number 0632-3430 (65*ter* number 4,196), ERN number 0632-3440 (65*ter* number 4,158), ERN number 0632-3459 (65*ter* number 4,102), ERN number 0632-3478 (65*ter* number 4,074), ERN number 0632-3488-0632-3490 (65*ter* number 4,057), ERN number 0632-3504 (65*ter* number 4,195), ERN number 0632-3514 (65*ter* number 4,202), ERN number 0632-3515 (65*ter* number 4,059), ERN number 0632-3516 (65*ter* number 4,121)) and that 5 others, though inaccurately cited, could be identified by the Trial Chamber (ERN number 0632-3421 (65*ter* number 131), ERN number 0632-3422 (65*ter* number 135), ERN number 0632-3419 (65*ter* number 134), ERN number 0632-3428 (65*ter* number 4,096), ERN number 0632-3511 (65*ter* number 4,254)). The Trial Chamber was unable to identify the remaining three references (ERN number 0632-3494 (65*ter* number 4,090), ERN number 0632-3525 (no identifiable corresponding 65*ter* number), ERN number 0632-3527 (65*ter* number 4,073)).

⁷ Motion, para. 7.

required to complete the compilation of the 85 different insignia and patches into a single document;⁸

NOTING that the Accused responded by oral submission on 8 April 2008, indicating that he opposed the admission of the Military Insignia Patch Book and disputed the validity of a number of insignia therein, though he did not specifically address the Prosecution's request to add the Military Insignia Patch Book to the Rule 65ter List;⁹

CONSIDERING that in order to grant a request for the addition of an exhibit to the Rule 65ter list — such a grant being the exception — the Trial Chamber must be satisfied that the rights of an accused are respected by making sure that the proposed exhibit is disclosed sufficiently in advance and that the addition does not hinder an accused in the preparation of his defence;¹⁰

CONSIDERING that the Trial Chamber may also take into account additional criteria, including, whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused and whether good cause for amending the exhibit list is shown;¹¹

CONSIDERING that the Prosecution will have to specify the individual insignia and patches it seeks to admit into evidence;¹²

CONSIDERING that the Trial Chamber is satisfied that the Prosecution has demonstrated the *prima facie* relevance of the Military Insignia Patch Book;

CONSIDERING that the addition of the Military Insignia Patch Book to the Rule 65ter List will not unduly burden the Accused in the preparation of his defence given that certain of its constituent parts are already among the proposed exhibits on the Rule 65ter List and that the Accused orally commented on 8 April 2008 that he had already examined the Military Insignia Patch Book;¹³

CONSIDERING further that the Military Insignia Patch Book was used by the Presiding Judge as a visual aid on 9 April 2008;¹⁴

⁸ Motion, para. 9.

⁹ Hearing of 8 April 2008, T. 5834-5838.

¹⁰ *Prosecutor v. Milan Martić*, Case No. IT-95-11-PT, Decision on Prosecution's Motion to Amend Its Rule 65ter Exhibit List, 15 December 2005, p. 3.

¹¹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Motion for Leave to Amend Rule 65ter Witness List and Rule 65ter Exhibit List, confidential, 6 December 2006, p. 7.

¹² Hearing of 8 April 2008, T. 5839-5842.

¹³ Hearing of 8 April 2008, T. 5834-5838.

¹⁴ The Trial Chamber made use of the Military Insignia Patch Book on 9 April 2008 to ask Witness VS-1014 whether he recognised certain insignia. Hearing of 9 April 2008, T. 5909-5910.

CONSIDERING therefore that it is in the interests of justice to allow the requested addition to the Rule 65*ter* List;

PURSUANT TO Rules 54 and 65*ter*(E)(iii) of the Rules,

HEREBY GRANTS the Motion.

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



Jean-Claude Antonetti
Presiding

Dated this twenty-third day of April 2008
At The Hague
The Netherlands

[Seal of the Tribunal]