



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: 11 October 2010
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French

TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 11 October 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**REDACTED VERSION OF "DECISION ON PROSECUTION MOTIONS
FOR ADMISSION OF DOCUMENTS PRESENTED THROUGH WITNESS
NENAD JOVIĆ"**

Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

1. Trial Chamber III (“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”), is seized of an oral motion by the Office of the Prosecutor (“Prosecution”) seeking admission of 11 documents, consisting of previous written statements, under 65 *ter* numbers 7327, 7328, 7329, 7330, 7331, 7332, 7333, 7334, 7335, 7544 and 7545 and presented through Witness Nenad Jović, formerly known as VS-032 (“Witness”), during his testimony before the Chamber on 6 and 7 July 2010 (“Oral Motion”)¹, [redacted].²

II. PROCEDURAL BACKGROUND

2. In the public oral decision rendered on 11 May 2010, the Chamber set 1 June 2010 as the deadline for filing all the motions that need to be taken into consideration for the 98 *bis* decision.³

3. In the motion filed as a public document on 1 June 2010, the Prosecution asked for additional time to request admission of written statements and related evidence documents originating from the Witness.⁴

4. In the Oral Decision of 14 June 2010, the Chamber allowed the Prosecution to file a motion for the admission of documents relating to the Witness at the conclusion of his testimony in the present case, if the Chamber decided that the Witness was able to testify, or within a maximum of three days following the Chamber’s decision that the Witness need not testify.⁵

5. [redacted].⁶

6. [redacted].⁷ [redacted].⁸

¹ Hearing of 7 July 2010, T(F), pp. 16291-16292, 16346-16347 (“Oral Motion”).

² [redacted]

³ Hearing of 11 May 2010, T(F), p. 15880.

⁴ “Prosecution’s Motion for Extension of Time to Tender Statements and Associated Exhibits of Witness VS-026 and VS-032”, 1 June 2010.

⁵ Hearing of 14 June 2010, T(F). 16095-16096.

⁶ [redacted]

7. At the end of the hearings of 6 and 7 July 2010, the Prosecution requested by an Oral Motion the admission of the following 11 documents, presented through the Witness:

- 1) 65ter Document 7327, corresponding to a previous written statement of the Witness given to the Prosecution, dated 10 and 11 July 2003, 14 and 15 July 2003 and signed on 28 September 2003;
- 2) 65ter Document 7328, corresponding to an internal memo from the Prosecution, dated 19 June 2003;
- 3) 65ter Document 7329, corresponding to a previous written statement of the Witness given to the Prosecution, dated 25 October 2005;
- 4) 65ter Document 7330, corresponding to a previous written statement of the Witness given to the Prosecution, dated 18 and 19 October 2006;
- 5) 65ter Document 7331, corresponding to a previous written statement of the Witness given to the Prosecution, dated 21 September 2007 and 1 October 2007;
- 6) 65ter Document 7332, corresponding to a written statement of the Witness given to the Accused's defence team, dated 29 January 2007 and certified on 2 March 2007;
- 7) 65ter Document 7333, corresponding to a written statement by the Witness given to the Accused's defence team, dated 29 January 2007 and certified on 31 January 2007;
- 8) 65ter Document 7334, corresponding to a handwritten letter by the Witness sent to the Accused, dated 24 July 2007;
- 9) 65ter Document 7335, corresponding to a written statement by the Witness, dated 13 June 2007;

⁷ [redacted]

⁸ [redacted]

- 10) 65^{ter} Document 7544, corresponding to a written statement by the Witness given to the Prosecution, dated 10 and 11 July 2003, 14 and 15 July 2003, unsigned;
- 11) 65^{ter} Document 7545, corresponding to a statement from Ms Marie Frances Costello, a Prosecution investigator, dated 7 April 2010.
8. [redacted]⁹ [redacted]¹⁰
9. [redacted] of the Rules of Procedure and Evidence (“Rules”).¹¹
10. At the administrative hearing of 21 September 2010, the Accused recalled that he had already objected several times to the admission of the previous statements taken by the Prosecution or by the police services.¹²

III. APPLICABLE LAW

11. The Chamber considered the documents requested for admission in light of Rules 89 and 95 of the Rules and the procedure set out in the Order of 15 November 2007 outlining the guiding principles governing the presentation of evidence and the conduct of the parties during trial.
12. The Chamber recalls furthermore that at this stage in the proceedings, it will only consider *prima facie* the relevance, reliability and probative value of the evidence submitted, without making a final assessment. This exercise will only take place at the end of the proceedings, in light of all the evidence, both from the Defence and Prosecution, that will have been admitted into evidence.¹³
13. At the same time, the documents discussed in court by a witness or attached to a previous written statement may be admitted when they are an integral part of the witness’s testimony or written statement, and form with it an inseparable and

⁹ [redacted]

¹⁰ [redacted]

¹¹ [redacted]

¹² Hearing of 21 September 2010, T(F), pp. 16379-16380.

¹³ *The Prosecutor v. Jadranko Prlić et al.*, Case no. IT-04-74-T, “Decision to Admit Documentary Evidence Presented by the Prosecution”, 5 October 2007, p. 7.

indispensable whole.¹⁴ To determine whether such documents are an integral part of the witness's testimony or previous statement and form with it an inseparable and indispensable whole, it is possible to verify if the witness did indeed comment on the contents of these documents during testimony or in the statement.¹⁵ Furthermore, the non-admission of these documents would render the witness's testimony or the written statement incomprehensible, and would render its probative value invalid.¹⁶

IV. DISCUSSION

A. On the Oral Motion

1. Regarding 65 ter Documents 7327, 7330

14. The Prosecution requests the admission of 65 ter Document 7327 corresponding to the previous written statement taken by the Prosecution during July 2003 and signed by the Witness on 28 September 2003. The Chamber notes that the Witness signed the English statement attesting to its content. This statement was taken with the assistance of an interpreter duly qualified and approved by the Tribunal Registry.

15. The Prosecution requests the admission of 65 ter Document 7330 corresponding to the previous written statement of the Witness taken by the Prosecution on 18 and 19 October 2006. The Chamber notes that the Witness signed

¹⁴ See in this sense "Oral Decision on the Documents Attached to the Previous Statements of Witnesses Stefanović, Petković, Rankić, VS-034 and VS-037", Hearing of 14 June 2010, T(F), pp. 16097-16098; *The Prosecutor v. Lukić et al.*, Case no. IT-98-32/1-T, "Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 bis", 22 August 2008, para. 21: "With regard to the associated exhibits, it is well established in the case law of the Tribunal that admission of such documents is permissible. It has been found that "exhibits accompanying written statements or transcripts form an inseparable and indispensable part of the testimony and can be admitted along with statements or transcripts". However, each document referred to in the evidence of a witness does not necessarily form an "inseparable and indispensable part" of such evidence. One way of making this determination is to ascertain whether the document has been the subject of comment by the witness either in the statement itself or during his testimony in a previous case. In the absence of the admission of such document, the statement or prior testimony may become incomprehensible and lose some of its probative value."; See also *The Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-PT, "Decision on Prosecution's Motion for Admission of Written Statements and Associated Exhibits Pursuant to Rule 92 bis of the Rules (two witnesses)", confidential, 18 March 2008, paras 20-21; *The Prosecutor v. Dragomir Milošević*, Case No. n° IT-98-29/1-T, "Decision on Admission on Written Statements, Transcripts and Associated Exhibits Pursuant to Rule 92 ter", 22 February 2007, p. 3; *The Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-PT, "Decision Regarding Prosecutor's Notice of Intent to Offer Transcripts under Rule 92 bis (D)", 9 July 2001, par. 8.

¹⁵ *Ibid.*

the BCS statement attesting to its contents. This statement was taken with the assistance of an interpreter duly qualified and approved by the Tribunal Registry.

16. The Chamber notes that 65 *ter* Documents 7327 and 7330 contain information about the Accused's role, according to the Prosecution, in the recruitment and motivation of volunteers for the Serbian Radical Party ("SRS") and of the Serbian Chetnik Movement ("SČP"), and about the involvement of these volunteers in events that took place in the Zvornik region, which are covered by the Indictment against the Accused.¹⁷

17. Following consideration, the Chamber deems that 65 *ter* Documents 7327 and 7330, the contents of which were brought up in court,¹⁸ present sufficient indicia of reliability, relevance and probative value to be admitted into evidence.

2. Regarding 65 *ter* Document 7544

18. The Prosecution requests furthermore the admission of 65 *ter* Document 7544, which, according to the Prosecution, is the unsigned version of 65 *ter* Document 7327. The Chamber notes that the Witness did not sign either the English or the BCS version of this previous witness statement. The Chamber points out additionally that the content of the two 65 *ter* Documents, 7327 and 7544, is not identical and that 65 *ter* Document 7327 contains a map of the town of Karakaj, annotated by hand and signed by the Witness, which is not contained in 65 *ter* Document 7544.

19. The Chamber deems, therefore, that 65 *ter* Document 7544 does not present sufficient indicia of reliability, relevance and probative value and thus cannot be admitted into evidence.

3. Regarding 65 *ter* Document 7328

¹⁶ *Ibid.*

¹⁷ "Third Amended Indictment", filed on 7 December 2007, French version filed on 2 January 2008, paras 6, 22.

¹⁸ See regarding 65 *ter* Document 7327: Hearing of 6 July 2010, T(F), [redacted], pp. 16189-16194, 16200-16206, 16220-16221 and Hearing of 7 July 2010, T(F), pp. 16274, 16294-16297, 16317-16322.

See also concerning 65 *ter* Document 7330: Hearing of 6 July 2010, T(F), pp. 16206-16207, 16220-16221, 16229-16234, 16242-16253 and Hearing of 7 July 2010, T(F), pp. 16294-16301, 16312-16314, 16324-16325, 16338-16343.

20. The Prosecution requests the admission of 65 *ter* Document 7328 corresponding to an Internal Memo from the Prosecution dated 19 June 2003. The Chamber notes that document source is clear and that the document is signed.

21. The Chamber notes that 65 *ter* Document 7328 was the subject of debate in court.¹⁹

22. The Chamber deems therefore that 65 *ter* Document 7328 is necessary in order to understand the testimony of the Witness and forms with it an inseparable and indispensable whole. Consequently, the Chamber admits it into evidence.

4. Regarding 65 *ter* Document 7329

23. The Prosecution requests the admission of 65 *ter* Document 7329, corresponding to a previous written statement from the Witness taken by the Prosecution and dated 25 October 2005.

24. The Chamber notes that the Witness did not sign either the English or the BCS version of the statement and that it is not relevant to the merits of the case. In this statement, the contents of which were raised in court,²⁰ the Witness indicates that an individual named Zlatko Perić, a former member of the Gokić paramilitary group belonging to the Radical Party, accused him on the radio of committing atrocities in Zvornik during the war and of encouraging families of victims to take vengeance. The Witness specified to the Chamber that he was afraid for his safety.²¹

25. The Chamber deems consequently that 65 *ter* Document 7329 does not present sufficient indicia of reliability, relevance and probative value to be admitted into evidence.

5. Regarding 65 *ter* Documents 7332 and 7333

26. The Prosecution requests the admission of 65 *ter* Document 7332 and 65 *ter* Document 7333 corresponding to two written statements in favour of the Accused, signed by the Witness and dated 29 January 2007.

¹⁹ Hearing of 6 July 2010, T(F). pp. 16183-16184.

²⁰ Hearing of 7 July 2010, T(F). pp. 16275-16279.

²¹ Hearing of 7 July 2010, T(F). p. 16279.

27. Concerning 65 *ter* Document 7332, the Chamber notes that the Witness's signature appears on the second to last page of the BCS statement and that the signature was certified on 2 March 2007.

28. Concerning 65 *ter* Document 7333, the Chamber notes that the Witness signed the BCS statement and that the signature was certified on 31 January 2007.

29. The Chamber notes that these two written statements, raised in court,²² contain information on the conditions under which the Witness's previous written statements were supposedly taken by the Prosecution, specifically on the pressure that the Prosecution allegedly put on the Witness.

30. The Chamber deems consequently that 65 *ter* Documents 7332 and 7333 present sufficient indicia of reliability, relevance and probative value at this stage to be admitted into evidence.

6. Regarding 65 *ter* Documents 7331 and 7335

31. The Prosecution requests the admission of 65 *ter* Document 7335 corresponding to the Witness's statement dated 13 June 2007, and 65 *ter* Document 7331 corresponding to the Witness's previous statement taken by the Prosecution on 21 September and 1 October 2007.

32. The Chamber notes that in 65 *ter* Document 7335, the Witness reconsidered the statement given in favour of the Accused in January 2007 and certified on 2 March 2007 – 65 *ter* Document 7332, indicating that the latter document did not correspond to what was stated that day.

33. The Chamber notes that the Witness dated and signed this BCS statement.

34. The Chamber notes also that 65 *ter* Document 7331 contains information on the conditions under which the Witness's statements in favour of the Accused were allegedly taken by the Accused's defence team, specifically on the pressure that the latter put on the Witness.

²² Hearing of 6 July 2010, T(F), p. 16183 and Hearing of 7 July 2010, T(F), pp. 16281-16285.

35. The Chamber notes that the Witness signed the BCS statement attesting to its content. This statement was taken with the assistance of an interpreter duly qualified and approved by the Tribunal Registry.

36. The Chamber deems consequently that 65 *ter* Documents 7331 and 7335, the contents of which were raised in court,²³ present sufficient indicia of reliability, relevance and probative value at this stage to be admitted into evidence.

7. Regarding 65 *ter* Document 7334

37. The Prosecution requests the admission of 65 *ter* Document 7334 corresponding to a letter written by the Witness to the Accused on 24 July 2007.

38. The Chamber notes that in this letter, the Witness informs the Accused of the errors and inaccuracies contained in the statement given in his favour in January 2007.

39. The Chamber notes that the Witness dated and signed the letter written in BCS.

40. The Chamber deems consequently that 65 *ter* Document 7334, the contents of which were raised in court,²⁴ presents sufficient indicia of reliability, relevance and probative value at this stage to be admitted into evidence.

8. Regarding 65 *ter* Document 7545

41. The Prosecution requests the admission of 65 *ter* Document 7545 corresponding to a statement from Ms Marie Frances Costello, a Prosecution investigator, dated 7 April 2010.

42. The Chamber notes that this statement is signed and its contents were raised in court.²⁵ The Chamber notes, however, that the statement makes no mention of the circumstances under which it was taken, nor is there a mention of the location where it was taken. This statement contains information on the conditions under which, according to the investigator, the different statements were taken from the Witness by the Prosecution between 2003 and 2007.

²³ Hearing of 6 July 2010, T(F), pp. 16178-16179 and Hearing of 7 July 2010, T(F), pp. 16281-16286.

²⁴ Hearing of 7 July 2010, T(F), pp. 16284-16285.

²⁵ Hearing of 6 July 2010, T(F), pp. 16184-16185.

43. The Chamber deems, consequently, that 65 *ter* Document 7545 presents sufficient indicia of reliability, relevance and probative value at this stage to be admitted into evidence.

B. [redacted]

44. [redacted]²⁶ [redacted]²⁷

45. [redacted]

V. DISPOSITION

46. **FOR THE FORGOING REASONS**, pursuant to Rules 89 (C) and 95 of the Rules,

PARTIALLY GRANTS the Oral Motion and,

ORDERS that documents under 65 *ter* numbers 7327, 7328, 7330, 7331, 7332, 7333, 7334, 7335 and 7545 be admitted into evidence;

ORDERS the Registry to assign to each of these documents an exhibit number.

DENIES the Motion to admit documents under 65 *ter* numbers 7329 and 7544 into evidence.

[redacted]

[redacted]

²⁶ [redacted]

²⁷ [redacted]

