



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
IT-03-69-T
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French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 3 August 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON THE FRANKO SIMATOVIĆ REQUEST FOR DISCLOSURE
OF CONFIDENTIAL DOCUMENTS FROM THE VOJISLAV ŠEŠELJ CASE
(IT-03-67)**

The Office of the Prosecutor

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The Accused

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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 a motion filed publicly on 2 June 2011 by Franko Simatović – the Accused in Case No. IT-03-69 *The Prosecutor v. Jovica Stanišić and Franko Simatović* (“*Stanišić and Simatović Case*”) – seeking disclosure of all of the confidential *inter partes* and *ex parte* documents from this case, IT-03-67, *The Prosecutor v. Vojislav Šešelj* (“Motion”).¹

II. PROCEDURAL BACKGROUND

2. On 2 June 2011, Franko Simatović (“Moving Party”) respectfully requested in a public motion the disclosure of all of the confidential *inter partes* and *ex parte* documents from the pre-trial phase and the trial phase which have been used in this case (“*Šešelj Case*”).²

3. On 3 June 2011, the Victims and Witnesses Section (“VWS”) sent an e-mail to the Legal Officer in Chambers, submitting an unofficial request to be consulted with regard to the Motion, in order to assist the Chamber in determining which documents coming from VWS should not be disclosed to the Moving Party, or should be subjected to appropriate redactions (“VWS Request”).

4. On 15 June 2011, the Office of the Prosecutor (“Prosecution”) publicly filed a submission in response, requesting that the Motion be denied in part (“Response”).³

5. Vojislav Šešelj (“Accused”) did not answer the Motion within the time-limit of 14 days running from his receipt of the Motion in BCS translation, as afforded him by Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”).⁴

¹ “Motion by Franko Simatović for Access to Confidential Materials in the *Šešelj Case*”, public, 2 June 2011.

² Motion, paras 1-2 and 11.

³ “Prosecution’s Response to Franko Simatović’s Motion for Access to Confidential Materials in the *Šešelj Case*”, public, 15 June 2011.

⁴ The Accused received the BCS translation of the Motion on 16 June 2011 (see procès-verbal of reception filed on 20 June 2011) and therefore had until 30 June 2011 to respond.

III. ARGUMENTS OF THE PARTIES

Arguments Made in the Motion

6. The Moving Party is applying for disclosure of all of the confidential *inter partes* and *ex parte* documents from the pre-trial and trial phases of the *Šešelj* Case, namely: (1) all transcripts of hearings in closed session, (b) all confidential exhibits, (c) all of the parties' submissions and all confidential decisions, and (d) all of the documentary evidence submitted by the parties but not admitted into evidence.⁵

7. The Moving Party argues that there is good reason to believe that having access to these documents will lend him substantial assistance in the preparation of his defence, inasmuch as the facts and events alleged in the indictment raised against him are directly tied to the crimes alleged against the Accused in the *Šešelj* Case.⁶

8. The Moving Party states, in this respect, that in both the indictment raised against him as well as in that raised against the Accused,⁷ the Prosecution alleges the existence of an armed conflict in which both of them are implicated, and that the documents for which he is requesting disclosure relate to the political and military context of this alleged armed conflict.⁸

9. The Moving Party indicates moreover that the Prosecution is alleging in the *Šešelj* Case that there was close collaboration between the Accused and the Moving Party, particularly in connection with a joint criminal enterprise.⁹

10. Lastly, the Moving Party underscores that the Prosecution has acknowledged the existence of a substantial nexus between the *Šešelj* Case and the *Stanišić* and *Simatović* Case.¹⁰

⁵ Motion, paras 1-2 and 11.

⁶ Motion, para. 3.

⁷ This is the Third Amended Indictment filed on 7 December 2007 ("Indictment").

⁸ Motion, para. 7.

⁹ Motion, paras 8-10. The Moving Party states that the Prosecution alleges, in the *Šešelj* Case, that there was tight coordination between the Accused, in his capacity as chair and/or founder of various nationalist parties such as the Serbian National Renewal Party and the Serbian Radical Party, and the

Arguments Made in the Response

11. In its Response, the Prosecution respectfully requests the denial in part of the Motion and opposes the disclosure of *ex parte* documents¹¹ and confidential submissions and decisions¹² on grounds that the Moving Party has not conclusively argued why the Chamber ought to grant him more extensive access than what was granted to his fellow accused, Jovica Stanišić, in its decision dated 24 April 2008.¹³

12. As concerns the documents within the remit of Rule 70 of the Rules, the Prosecution contends that they could not be disclosed to the Moving Party before it has obtained consent from the source.¹⁴

13. Further to this, the Prosecution argues that the Moving Party should not be able to obtain immediate access to the documents related to the protected witnesses in the *Šešelj* Case, who were granted a measure for delayed disclosure of their identity in the *Stanišić* and *Simatović* Case, and who could be summoned to appear in the latter case.¹⁵

14. Moreover, in the event the Chamber decides to grant the request for disclosure of the confidential submissions and decisions, the Prosecution is asking that such disclosure be limited to only those submissions and decisions which concern the topics pinpointed by the Decision of 24 April 2008 as being the topics which constitute a nexus between the two cases.¹⁶ The Prosecution adds that, regardless of the outcome, those confidential submissions and decisions relating particularly to protective measures, to summonses, to videoconference testimony, to the redaction of

Moving Party, in his alleged capacity as head of the State Security Service of the Ministry of Internal Affairs of the Republic of Serbia.

¹⁰ Motion, para. 10.

¹¹ Response, para. 12.

¹² Response, para. 13.

¹³ Response, paras 1, 4, 8-9, citing in the footnote the “Decision on Stanišić Motion for Access to Confidential Materials in the *Šešelj* Case Pursuant to Rule 75(G)(i)”, 24 April 2008, public (“Decision of 24 April 2008”), whereby the Chamber gave Jovica Stanišić access to confidential *inter partes* documents from the *Šešelj* Case, restricted to certain designated topics, and denied his request for access to the *ex parte* documents and to the confidential submissions in the *Šešelj* Case.

¹⁴ Response, para. 10.

¹⁵ Response, para. 11.

¹⁶ Response, para. 14.

public hearings and, ultimately, any document relating to the Accused's health, should not be disclosed to the Moving Party.¹⁷

15. Finally, as concerns documentary evidence submitted by the parties but not admitted to the record, the Prosecution states that the Moving Party must comply with the disclosure procedure governed by Rules 66 and 68 of the Rules.¹⁸

IV APPLICABLE LAW

16. Case-law discerns three categories of confidential documents: *inter partes* documents, *ex parte* documents and documents falling within the remit of Rule 70 of the Rules. Each one of these categories is subject to differing requirements for access.¹⁹

17. For confidential *inter partes* documents, a party is entitled to request to review documents filed in another case before the Tribunal which will assist it in preparing its defence, provided that it has identified the documents it seeks or specified their general characteristics and a legitimate forensic purpose for such access has been shown.²⁰ Before granting a request for access to confidential documents, the Trial Chamber must be persuaded that the moving party has established that the exhibit in question is "likely to assist the [a]pplicant's case materially, or that there is at least a good chance that it would",²¹ without necessarily needing to establish a specific reason why each individual document is likely to be useful.²² This requirement is met once the moving party shows "the existence of a nexus between the [a]pplicant's case and the case[s] from which such material is sought" that is to say, the geographic,

¹⁷ Response, para. 14.

¹⁸ Response, para. 15.

¹⁹ Decision of 24 April 2008, para. 11. See also *The Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/-1-PT, "Decision on Vlastimir Đorđević's Motion for Access to All Material in *Prosecutor v. Limaj et al.*, affaire no. IT-03-66", public, 6 February 2008, paras 6 to 15. See also *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-A, "Decision on Motion by Mićo Stanišić for Access to All Confidential Materials in the *Krajišnik* Case", public, 21 February 2007 ("*Krajišnik* Decision"), pp. 5 and 6.

²⁰ See Decision of 24 April 2008, para. 12; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, "Decision on Radovan Karadžić's Motion for Access to Confidential Material in the *Dragomir Milošević* Case", public, 19 May 2009 ("*Milošević* Decision"), para. 7.

²¹ Decision of 24 April 2008, para. 12; *Milošević* Decision, para. 8.

²² *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-A, "Decision on Motion by Radivoje Miletić for Access to Confidential Information", public, 9 September 2005 ("*Miletić* Decision"), p. 4.

temporal or otherwise substantive nexus between the two cases.²³ The Appeals Chamber has, moreover, emphasized that the relevance of the exhibits requested may be determined by showing the cases “stem from events alleged to have occurred in the same geographic area and at the same time”.²⁴ The Chamber recalls, moreover, that the principle of equality of arms assumes that the accused will be placed on a similar footing to the Prosecution, which has access to all of the submissions filed *inter partes* so that it may understand the proceedings and the evidence and weigh their relevance in relation to his own case.²⁵ As a result, after an accused has been granted leave to inspect confidential exhibits or testimony that is confidential or has been heard in closed session in another case before the Tribunal, he must have the opportunity to inspect the motions, submissions, decisions and hearing transcripts that relate to them.²⁶

18. For confidential *ex parte* documents, the requirements are “more stringent” for establishing proof of a legitimate forensic purpose and access to that category of documents can only be granted on an exceptional basis.²⁷ Indeed, “‘*ex parte* material, being of a higher degree of confidentiality, by nature contains information which has not been disclosed *inter partes* because of security interests of a State, other public interests, or privacy interests of a person or institution’ and thus ‘the party on whose behalf *ex parte* status has been granted enjoys a protected degree of trust that the *ex parte* material will not be disclosed’.”²⁸

²³ Decision of 24 April 2008, para. 12; *Milošević* Decision, para. 8; see also *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, “Decision on Momčilo Perišić’s Request for Access to Confidential Material in the *Dragomir Milošević* Case”, public, 27 April 2009, para. 5; *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, “Decision on Motion by Hadžihasanović, Alagić, and Kubura for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Prosecutor v. Tihomir Blaškić* Case”, public, 23 January 2003, p. 4; *The Prosecutor v. Milan Martić*, Case No. IT-95-11-A, “Decision on Motion by Jovica Stanišić for Access to Confidential Testimony and Exhibits in the *Martić* Case Pursuant to Rule 75 (G) (i)”, public, 22 February 2008, para. 9.

²⁴ *Krajišnik* Decision, p. 5; see also *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, “Decision on Appellants Dario Kordić and Mario Čerkez’s Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Post Appeal Pleadings and Hearing Transcripts Filed in *The Prosecutor v. Blaškić*”, public, 16 May 2002, para. 15.

²⁵ *Miletić* Decision, p. 4. See also *The Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, “Decision on Vlastimir Đorđević’s Motion for Access to Transcripts, Exhibits and Documents”, public, 16 February 2010, para. 11 (“*Šainović* Decision”).

²⁶ “Decision on Motions by Mićo Stanišić and Stojan Župljanin Seeking Disclosure of Confidential Documents in the Vojislav Šešelj Case”, public, 27 August 2010, para. 25 (“*Stanišić* and *Župljanin* Decision”); *Milošević* Decision, paras 11-12; *Šainović* Decision, para. 11.

²⁷ Decision of 24 April 2008, para. 13.

²⁸ Decision of 24 April 2008, para. 13; *Krajišnik* Decision, p. 5; *Šainović* Decision, para. 10.

19. Lastly, documents may be considered confidential when their use is subject to restrictions under Rule 70 of the Rules. In such cases, neither the information disclosed to the Prosecution or the Defence in connection with Rule 70 in any case, nor its origin can be revealed to the accused in another case without the consent of the source, regardless of whether it has been used as evidence in the original case.²⁹

20. According to the provisions of Rule 66 (B) of the Rules, upon Request, the Prosecutor must permit the defence inspect any books, documents, photographs and objects in the Prosecution's custody or under its control, which are material to the preparation of the defence of the accused, or are intended to be used by the Prosecutor as evidence at trial, or were obtained from or belong to the accused.

21. In like manner, according to the provisions of Rule 68 (i) of the Rules, the Prosecution has the duty to disclose as soon as practicable to the Defence any material that, within the actual knowledge of the Prosecutor, may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.

22. If the Defence finds that the Prosecution has not lived up to its obligations, it may request the disclosure of material in the custody of the Prosecution.

23. The Chamber recalls, finally, that the established case-law of the Tribunal, with regard to requests by other accused before the Tribunal seeking disclosure of documents put to witnesses in court, of documents whose admission into evidence has been requested or of exhibits, limits such disclosure solely to "exhibits" conclusively admitted into evidence. Thus, for example, in Case No. IT-04-81-T *The Prosecutor v. Momčilo Perišić* ("Perišić Case"), specifically involving the request for disclosure made by the accused Zdravko Tolimir of confidential material used during witness interviews but not admitted into evidence, the Trial Chamber pointed out that such documents could not be considered "confidential exhibits", declined jurisdiction to decide on such a request and granted the request for disclosure of the exhibits conclusively admitted into evidence.³⁰ The Trial Chamber recalled for Zdravko

²⁹ Decision of 24 April 2008, para. 14; *Krajišnik* Decision, p. 6.

³⁰ *The Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-T, "Decision on Zdravko Tolimir's Urgent Request for Disclosure of Confidential Material from the Perišić Case", public, 30 September 2010 ("Perišić Decision"), paras 1, 11 and 13. See further in this regard: *The Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-T, "Decision on General Miletić's Request for Access to Confidential

Tolimir on this occasion that the Prosecution had a disclosure obligation pursuant to Rules 66 and 68 of the Rules.³¹

24. Likewise, the Chamber notes that in Case No. IT-05-87-A, *The Prosecutor v. Nikola Šainović et al.*, the Appeals Chamber likewise restricted the disclosure of evidence to another accused before the Tribunal to “exhibits” admitted into evidence.³²

V. DISCUSSION

A. Concerning the VWS Request

25. The Chamber notes that the VWS merely informed the Legal Officer in Chambers of its wish to be consulted in matters involving the Motion. The Chamber recalls that this is not the procedure to be followed, because there was no request to the Chamber pursuant to Rule 33 (B) prior to the filing of the submission. The Chamber observes, for this reason, that between the filing of the Motion on 2 June 2011 and this Decision, VWS had the opportunity, for two months, to submit observations concerning the Motion, if it so wished, and that it intentionally chose not to do so.

B. Concerning the Confidential *Inter Partes* Documents

26. The Chamber holds first of all that the confidential *inter partes* documents used in the *Šešelj* Case, for which the Moving Party is requesting disclosure, have been sufficiently identified and that their general characteristics have been identified.

27. As concerns the connection between the *Stanišić* and *Simatović* Case and the *Šešelj* Case, the Chamber first observes that the Indictment covers the period extending from 1 August 1991 to the month of September 1993 and that the

Information in the *Karadžić* Case”, public, 31 March 2010, paras 1 and 20 (a)(ii). The Chamber notes that the request was more broad – “evidence which will be admitted or presented confidentially during the remainder of the trial” – and the Trial Chamber ordered disclosure of the “trial exhibits”; see also *The Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-T, “Decision on Defence Motion for Access to Transcripts, Exhibits and Documents in the *Đorđević* Case”, public, 10 June 2009, para. 21 and p. 8.

³¹ *Perišić* Decision, para. 11.

indictment brought against the Moving Party concerns the period extending from 1 April 1991 to 31 December 1995, approximately.³³ The Chamber is thus of the view that there is a partial but sufficient temporal nexus between the two cases.

28. The Chamber recalls, secondly, that Franko Simatović and the Accused are being prosecuted for crimes such as persecution, murder, expulsion and inhumane acts (forcible transfer), which were committed in connection with a joint criminal enterprise involving the Moving Party, the Accused and other participants, including Radovan Karadžić, Biljana Plavšić, General Ratko Mladić and Slobodan Milošević.³⁴ The Chamber for this reason holds that this factual nexus is sufficient.

29. The Chamber notes, finally, that the Moving Party is being prosecuted for crimes allegedly committed in Bosnia-Herzegovina (“BH”), in the municipalities of Biljena, Bosanski Šamac, Doboј, Sanski Most, Srebrenica/Trnovo and Zvornik, and in Croatia in the SAO of Krajina and in the SAO of Slavonia, Baranja and Western Srijem/Srem.³⁵ Meanwhile, the Indictment covers a geographic area which is larger, inasmuch as some of the crimes alleged against the Accused were alleged to have been committed in BH in the municipalities of Ilijaš, Vogošća, Novo Sarajevo, Ilidža, Rajlovac, Mostar, Nevesinje and Brčko, but also, in certain portions of Vojvodina in the Republic of Serbia.³⁶ Finally, the Chamber notes that the Moving Party is being prosecuted for crimes which were committed in the municipalities of BH and the regions of Croatia overlapping those targeted in the Indictment (Biljena, Bosanski Šamac, Zvornik, SAO of Krajina and SAO of Slavonia, Baranja and Western Srijem/Srem).³⁷ Consequently, the Chamber holds that the geographic nexus between the two cases, though partial, is sufficient.

³² *The Prosecutor v. Nikola Šainović et al.*, Case No. IT-05-87-A, “Decision on Vlastimir Đorđević’s Motion for Access to Transcripts, Exhibits and Documents”, public, 16 February 2010, particularly para. 21.

³³ Indictment, paras 8 (a), 15, 18, 28, 31, 34; Indictment against Franko Simotović, para. 11.

³⁴ Indictment, paras 8, 15-34; Indictment against Franko Simatović, paras 12, 19-63.

³⁵ Indictment against Franko Simatović, paras 19-61.

³⁶ See Indictment, paras 6, 12, 14.

³⁷ Indictment against Franko Simatović, paras 19-61; Indictment, para. 6.

30. The Chamber consequently holds that there may be “a good chance”³⁸ that the confidential *inter partes* documents from the pre-trial and trial phases of the *Šešelj* Case will assist the Moving Party in bringing his case.

31. The Chamber considers, in fact, that the existence of a factual, geographic and temporal nexus, though partial, between the two cases is sufficient to justify access to all of the confidential *inter partes* documents in the *Šešelj* Case, inasmuch as, as the Appeals Chamber recalled, the less demanding criterion here resides in the “good chance” that the disclosed documents will assist the Moving Party in preparing his defence, without needing to explain how each of the documents is likely to be useful.³⁹

32. In the same vein, the Chamber considers that when an accused obtains leave to inspect confidential exhibits, testimonies or transcripts of closed session hearings from another trial before the Tribunal, he must have the opportunity to inspect the motions, submissions and decisions which may relate to it.⁴⁰ The principle of equality of arms assumes that the accused will be placed on equal footing with the Prosecution, which has access to all of the submissions filed *inter partes*, so that he may understand the proceedings and the evidence and weigh their relevance in relation to his own case.⁴¹ Therefore, the Chamber finds that the Moving Party needs to be given access to the confidential *inter partes* submissions and decisions of the *Šešelj* Case, inasmuch as these documents are likely to assist him in bringing his case.

33. However, the Chamber finds that the confidential *inter partes* submissions and decisions relating to the Accused’s health are in no way likely to assist the Moving Party in the preparation of his case.

34. In conclusion, then, the Chamber finds that the requirements have been met for granting the Moving Party access to all of the confidential *inter partes* documents from the *Šešelj* Case which follow: all of the transcripts of closed session hearings, all

³⁸ *Milošević* Decision, para. 8; Decision of 24 April 2008, para. 12.

³⁹ *Milošević* Decision, para. 11; *Miletić* Decision, p. 4; see also in this respect, *Stanišić* and *Župljanin* Decision, paras 33-36.

⁴⁰ *Stanišić* and *Župljanin* Decision, para. 25; *Milošević* Decision, paras 11-12.

⁴¹ *Miletić* Decision, p. 4; *Šainović* Decision, para. 11.

of the confidential *inter partes* exhibits, all of the confidential decisions and submissions from the parties, except for those pertaining to the Accused's health.

C. Concerning the Confidential *Ex Parte* Documents

35. The Chamber considers that the Moving Party has not established that, to ensure his fundamental right to a fair trial, he needed to consult the documents produced in the *Šešelj* Case on an *ex parte* basis. Furthermore, the Chamber finds that the Moving Party has not made a showing that the *ex parte* quality of the documents produced in the *Šešelj* Case was no longer warranted with respect to him. The Chamber for this reason concludes that the more stringent conditions attached to the inspection of confidential *ex parte* documents in the *Šešelj* Case have not been met.

D. Concerning the Confidential Documents Under Rule 70 of the Rules

36. The Chamber considers that the confidential documentation admitted into the record here by the parties in accordance with Rule 70 of the Rules cannot be disclosed to the Moving Party unless the consent of the source providing them has been obtained. On that basis, the Chamber is providing the Moving Party access to that documentation to the extent such required consents have been obtained in advance.

E. Concerning the Confidential Evidence Submitted by the Parties But Yet Not Admitted into Evidence

37. The Chamber deems itself not competent to consider the request for disclosure of the documentary evidence submitted by the parties that was not admitted into evidence and did not thus receive the status of an exhibit. Nevertheless, the Chamber reminds the Moving Party that as the Prosecution is a single, indissociable unit, the Prosecution team in the *Stanišić* and *Simatović* Case must discharge the duties of disclosure placed upon it by Rules 66 and 68 (i) of the Rules, a disclosure which may possibly involve the documentary evidence submitted by the parties but not admitted into evidence.⁴²

⁴² See in this respect "Decision on Mićo Stanišić Motion for Disclosure of Exhibit List and "MFI" Materials from the *Šešelj* Case (IT-03-67)", public, 1 August 2011, paras 23-24.

F. Concerning the Protected Witnesses in the Šešelj Case With Delayed Disclosure of their Identity in the Stanišić and Simatović Case

38. Concerning the request for time brought by the Prosecution concerning the disclosure of confidential documents relating to the protected witnesses in the Šešelj Case, who also benefited from measures of delayed disclosure of their identity in the Stanišić and Simatović Case, and who are likely to be called to testify in the Stanišić and Simatović Case, the Chamber holds that this request is moot inasmuch as the Prosecution rested its case on 5 April 2011 in the Stanišić and Simatović Case.⁴³

39. The Chamber considers that this request is no longer necessary, given that the identity of all of the Prosecution witnesses with delayed disclosure in the Stanišić and Simatović Case have now necessarily been revealed to the Moving Party, as all of these witnesses have now appeared. For this reason, the disclosure of the confidential documents from the Šešelj Case relating to these witnesses is unlikely to jeopardize the protective measures assigned to these witnesses in connection with the Stanišić and Simatović Case.

G. Concerning the Confidential Inter Partes Exhibits Admitted into Evidence at the Request of the Accused and the Submissions of the Accused

40. The Chamber has ordered the Accused to indicate to the Registry of the Tribunal (“Registry”), within 30 days of the date of this Decision, which confidential documents from the pre-trial and trial phases of the Šešelj Case are already available *inter partes* at this moment, and, then, of the filing of new *inter partes* documents as it occurs, so that such documents may be disclosed to the Moving Party.

41. The Chamber reminds the Accused of the need to discharge this duty diligently, as the rights of the Moving Party are at stake, and instructs the Registry of the Tribunal (“Registry”) to assist the Accused in case he has any difficulties in meeting this duty.

⁴³ *The Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, “Decision on Prosecution Motion to Reopen Prosecution Case and for the Admission of Documents from the Bar Table”, confidential, 7 June 2011, para. 12.

H. The Scope of this Decision

42. The Chamber considers that it is proper, out of concern for fairness, *proprio motu* to extend the effective scope of this Decision to the co-Accused of the Moving Party, Jovica Stanišić, so that the latter and the Moving Party receive equal access to the confidential *inter partes* documents from the *Šešelj* Case, inasmuch as the overlap between the *Stanišić* and *Simatović* Case and the *Šešelj* Case is identical, whether one considers the charges alleged against Jovica Stanišić or those alleged against the Moving Party.⁴⁴

VI. DISPOSITION

43. **FOR THE FOREGOING REASONS**, pursuant to Rules 54, 70, 73 and 75 (F) of the Rules,

PARTIALLY GRANTS the Motion and

- (a) **ORDERS** the parties to indicate to the Registry, within 30 days of the date of this Decision, the confidential documents from the pre-trial and trial phases of the *Šešelj* Case which are already available *inter partes*, and then once new *inter partes* documents not within the remit of Rule 70 of the Rules are filed, so that they may be disclosed to the Moving Party, namely:
- (i) all transcripts of witness interviews and of hearings held in closed session and in private session;
 - (ii) all confidential exhibits;
 - (iii) all confidential *inter partes* submissions;
 - (iv) all confidential *inter partes* decisions by the Chamber.
- (b) **ORDERS** the Prosecution to identify those documents within the remit of Rule 70 of the Rules and to immediately make contact with the source

⁴⁴ In its Decision of 24 April 2008, the Chamber only granted to Jovica Stanišić an access to confidential *inter partes* documents from the *Šešelj* Case that was limited to certain designated subjects and had denied the request for access to *ex parte* documents and confidential submissions from the *Šešelj* Case.

providing them in order to learn whether it will accept disclosure of the document, following which the Prosecution shall inform the Registry of the said source's answer;

- (c) **ORDERS** the Registry to disclose to the Moving Party immediately the confidential *inter partes* documents, as identified by the parties to these proceedings in keeping with paragraph (a), excluding those documents described in paragraph (d);
- (d) **ORDERS** the Registry to refrain from disclosure of those confidential submissions and decisions relating to the Accused's health;
- (e) **ORDERS** the Registry to refrain from disclosure of all documents coming from the Prosecution falling within the remit of Rule 70 of the Rules, until the Prosecution informs the Registry that it has obtained the consent of the source in compliance with the provisions of paragraph (b) above, even if the said source had already accepted that the document in question be used in a previous case. If the consent of the source providing the documents falling within the remit of Rule 70 of the Rules cannot be obtained, such documents shall not be disclosed.
- (f) **ORDERS** the Registry to assist the Accused, in the event that the latter encounters hardships in fulfilling this obligation, to identify and disclose to the Moving Party all of the confidential *inter partes* submissions filed on behalf of the Accused and all of the confidential exhibits admitted into evidence upon the Accused's request;
- (g) **ORDERS** that no *ex parte* document produced in the *Šešelj* Case be disclosed to the Moving Party;
- (h) **ORDERS** that – in the absence of express authorization from the Chamber, finding adequate proof that disclosure to third parties of the confidential *inter partes* documents defined *supra* is absolutely necessary to the preparation of the Moving Party's defence – the latter, his counsel

and any of his legal associates, having received an order or authorization to inspect the said documents, must not:

- (i) disclose to third parties the identity of any witness, their address, their written statements, the transcripts of their testimonies, the exhibits or any other information making it possible to identify them and which would breach the confidentiality of existing protective measures;
- (ii) disclose to third parties any confidential evidence, documentary or otherwise, or reveal in part or in whole the substance of any confidential evidence from the *Šešelj* Case;
- (iii) to contact any witness whose identity is protected.

If, for purposes of preparing the Moving Party's defence, confidential documents are disclosed to third parties, with leave of the Chamber, any person receiving them shall be informed by the Moving Party or his counsel that he or she is forbidden to copy, reproduce or make public, in whole or in part, any confidential information, or to disclose it to any other person; moreover, if a person has received one of these documents, such person must return it to the Moving Party, to his counsel or to any person they have authorized, once such person no longer requires this information for the preparation of the defence.

For purposes of paragraph (h), "third parties" shall exclude: (i) the Moving Party, (ii) his counsel, (iii) any legal associate having received order or authorization from counsel to inspect the confidential documents and (iv) the staff of the Tribunal, including the members of the Prosecution.

If counsel for the Moving Party or a member of the defence team authorized to consult the confidential documents filed *inter partes* in the *Šešelj* Case withdraws from the *Stanišić* and *Simatović* Case, such individual will return to the Registry every confidential document given to him or her pursuant to this Decision.

- (i) **RECALLS** that all of the protective measures initially assigned in the *Šešelj* Case continue to apply in connection with the proceedings instigated against the Moving Party, pursuant to Rule 75 (F)(i) of the Rules.

- (j) **DECIDES** *proprio motu*, out of concern for fairness, to extend the effective scope of this Decision to Jovica Stanišić, who is hereby authorized to inspect the confidential documents from the *Šešelj* Case, subject to the same requirements as the Moving Party.

DENIES the Motion in all other respects.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this third day of August 2011
At The Hague
The Netherlands

[Seal of the Tribunal]

