



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: 9 July 2007

Original: ENGLISH
French

THE PRE-TRIAL JUDGE

Before: Judge Jean-Claude Antonetti

Registrar: Mr Hans Holthuis

Order of: 9 July 2007

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**ORDER REGARDING DISCLOSURE OF MATERIAL PURSUANT TO
RULE 68 (i) OF THE RULES OF PROCEDURE AND EVIDENCE**

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 (“the Tribunal”);

PROPRIO MOTU

PURSUANT TO Rule 68 of the Rules of Procedure and Evidence (“the Rules”) which provides *inter alia* that

[s]ubject to the provisions of Rule 70,

(i) the Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence;

(ii) without prejudice to paragraph (i), the Prosecutor shall make available to the defence, in electronic form, collections of relevant material held by the Prosecutor, together with appropriate computer software with which the defence can search such collections electronically;

CONSIDERING that on 7 June 2007, the pre-trial Judge ordered “the Prosecution to disclose, ‘as soon as practicable’, in hard-copy and in a language that the Accused understands, the Rule 68 (i) documents” (“Decision of 7 June”);¹

CONSIDERING that during the status conference of 4 July 2007 (“Conference of 4 July”), attention was drawn to a certain number of problems regarding the disclosure of Rule 68 (i) material;²

CONSIDERING in particular that the Accused stated that on 30 September 2004 he received approximately 207,000 pages of Rule 68 documents in electronic format, but that he refused them and requested that they be disclosed in hard copy;

¹ Decision on Motion Number 289 Regarding Form of Disclosure, para. 37.

² Status conference of 4 July 2007, Transcript in French (“T(F)”), pp. 1299, 1301, 1312-1342.

CONSIDERING that prior to the amendment to Rule 68 dated 6 April 2004, the obligation on the Prosecution was a general obligation to, “as soon as practicable, disclose to the defence the existence of material known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence”;³

CONSIDERING that the Prosecution submits that

for purposes of ensuring compliance with the orders of this Court in June 2007, I need to make sure that he has -- Mr. Seselj has received in paper, in Serbian, everything under Rule 68(i). I can't recreate those disks and then decide, is it -- which paragraph it falls under. If he wants to use the old disks, they are available to him. What I'm saying is that with the rules as they stand now, if we have material within our knowledge that falls within Rule 68(i), it will be disclosed per the orders of the Chamber in the appropriate format to facilitate his preparation of his defence.⁴

CONSIDERING that the Prosecution's proposed solution seems the one most appropriate to permit the Prosecution to satisfy its obligations under Rule 68 (i) of the Rules and further to the Decision of 7 June;

CONSIDERING moreover that, contrary to the argument of the Accused, disclosure under Rule 68 (i) need not necessarily be completed prior to the commencement of trial;

CONSIDERING, conversely, that such an interpretation would in fact run counter to the spirit of the Rules, and that the Appeals Chamber has reaffirmed that the Prosecution's obligation under Rule 68 is continuous;⁵

³ IT/32/Rev. 28, 17 July 2003; Rev. 30, 6 April 2004.

⁴ Status conference of 4 July 2007, T(F), pp. 1324-1325.

⁵ *The Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Appeals Judgement, 29 July 2004 (“*Blaškić Appeals Judgement*”), para. 264; *The Prosecutor v. Radoslav Brđanin*, Case No.: IT-99-36-A, “Decision on Appellant's Motion for Disclosure pursuant to Rule 68 and Motion for an Order to the Registrar to Disclose Certain Materials”, 7 December 2004.

CONSIDERING furthermore that although the Prosecution must determine which evidence is exculpatory and is under no obligation to consult with the Accused in this regard,⁶ in this case, it seems appropriate that, as he did during the status conference of 4 July,⁷ the Accused provide the Prosecution with avenues of research and keywords, so that it can more effectively identify what constitutes exculpatory evidence;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 68 (i) of the Rules,

ORDER

(i) the Prosecution to continue to use all the necessary means so that it can continue to meet its obligations pursuant to Rule 68 (i) and further to the Decision of 7 June 2007; and

(ii) the Accused to provide the Prosecution with the keywords he believes may be necessary to enable the Prosecution to find the Rule 68 (i) exculpatory material more effectively.

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

/signed/

Jean-Claude Antonetti

Pre-Trial Judge

Done this ninth day of July 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

⁶ *Blaškić Appeals Judgement*, para. 264.

⁷ Status Conference of 4 July, T(F), pp. 1338-1339.