



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: 5 February 2008

Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Order of: 5 February 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**ORDER FOR CLARIFICATION OF TWO PROSECUTION MOTIONS
FOR JUDICIAL NOTICE OF DOCUMENTARY EVIDENCE**

The Office of the Prosecutor:

Mr Daryl Mundis

The Accused:

Mr Vojislav Šešelj

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");

SEIZED of two motions for the judicial notice of documentary evidence in accordance with Rule 94 (B) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), filed by the Office of the Prosecutor ("Prosecution") respectively on 14 July 2006¹ and 28 November 2006² ("the two Motions");

CONSIDERING that according to the Prosecution, in accordance with Rule 94 (B) of the Rules and with established Tribunal jurisprudence in this regard, documents submitted for the purpose of judicial notice have been admitted in the cases of *The Prosecutor v. Slobodan Milošević*, *The Prosecutor v. Mile Mrkšić et al.*, *The Prosecutor v. Blagoje Simić et al.* and *The Prosecutor v. Momčilo Krajišnik* ("the previous cases");³

CONSIDERING that Rule 94 (B) of the Rules permits the Trial Chamber, at the request of a party or *proprio motu*, after hearing the parties, to take judicial notice of adjudicated facts or documentary evidence admitted in other proceedings of the Tribunal relating to matters at issue in the current proceedings;

CONSIDERING accordingly that pursuant to Rule 94 (B) of the Rules, it is incumbent upon the Prosecution to establish the relevance of the documentary evidence for which it seeks judicial notice;⁴

CONSIDERING first that the two Motions refer only to the exhibit numbers assigned to the documentary evidence in the cases in which the Prosecution alleges it was admitted, but that the references to the court transcripts pertaining to their admission do not appear;

¹ Prosecution's Motion to Take Judicial Notice of Documentary Evidence pursuant to Rule 94 (B) with Annex A, 14 July 2006.

² Prosecution's Second Motion to Take Judicial Notice of Documentary Evidence pursuant to Rule 94 (B) with Annex, 28 November 2006.

³ First Motion, paras. 1, 4; Second Motion, paras. 2, 4.

⁴ *The Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006, para. 16; *The Prosecutor v. Rasim Delić*, Case No.

CONSIDERING second that the two Motions state the alleged relevance of this documentary evidence but fail to provide the necessary details to assess that relevance;⁵

CONSIDERING moreover that the references to the numbers on the 65 *ter* list provided in annex to the motions do not seem to correspond with the 65 *ter* numbers currently being used in this case;

CONSIDERING that the Chamber holds that the information relating to the relevance of the documents and their admission during prior cases is insufficient to conduct an examination of the two Motions;

CONSIDERING that the Chamber notes in this regard that the procedure for judicial notice remains an exception to the usual procedure for the admission of documentary evidence, according to which it is incumbent upon the requesting party to establish that the criteria under Rule 89 (C) of the Rules have effectively been met, and the Chamber thus considers that these same criteria, at least, are also applicable in the context of judicial notice;⁶

FOR THESE REASONS

IN ACCORDANCE with Rules 54 and 94 (B) of the Rules,

ORDERS the Prosecution to establish in writing a consolidated new list of the documents submitted for judicial notice no later than 19 February 2008, including:

IT-04-83, Decision on Prosecution's Motion for Admission of Documentary Evidence pursuant to Rule 94 (B), 9 July 2007, p. 4.

⁵ The Chamber notes that the First Motion states only a series of issues connected to the Indictment to which the documents submitted purportedly relate, while the list annexed to this motion provides only a brief description of each document seeming to be a duplication of the 65 *ter* list of documentary evidence; *see* First Motion, para. 5, Annex A; the Second Motion establishes in a more detailed fashion the relevance of the documents submitted for judicial notice with respect to this case by arranging them by subject and by establishing the nexus between the different subjects and the case, but provides no further details in the annexed list: *see* Second Motion, paras. 5-9, Annex.

⁶ *The Prosecutor v. Rasim Delić*, Case No. IT-04-83, Decision on Prosecution's Motion for Admission of Documentary Evidence pursuant to Rule 94 (B), 9 July 2007, p. 4; the Chamber further recalls the hearing of 2 May 2007 during which the pre-trial Judge then in charge of this case expressed his wish to be provided, for each exhibit on the 65 *ter* list of documentary evidence, with the references to the

- (i) references, updated where appropriate, to their number on the Prosecution's 65 *ter* list in the present case and to their ERN number;
- (ii) a description of the documents, their date, their author and, where appropriate, a specific reference to the part of the document requested for admission;
- (iii) the exhibit number assigned to them in the prior cases;
- (iv) the reference to the court transcript corresponding to their admission in the prior cases;
- (v) an explicit statement of the relevance of each of the documents (or excerpts thereof) submitted by reference to the paragraphs of the indictment that is currently authoritative in the present case.

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

 /signed/

Jean-Claude Antonetti
Presiding Judge

Done this day and month in letters and year in numbers
At The Hague
The Netherlands

[Seal of the Tribunal]

paragraphs of the Indictment to which they relate: *see* hearing of 2 May 2007, French transcript p. 1120.