



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: 30 October 2007
Original: ENGLISH
French

BEFORE TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 30 October 2007

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S MOTION TO ADMIT INTO
EVIDENCE TRANSCRIPTS OF VOJISLAV ŠEŠELJ'S TESTIMONY GIVEN
IN THE *MILOŠEVIĆ* CASE**

The Office of the Prosecutor:

Ms Christine Dahl

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 the motion by the Office of the Prosecutor (“Prosecution”) to admit into evidence the transcripts of the testimony of Vojislav Šešelj (“Accused”) in the case of *The Prosecutor v. Slobodan Milošević*¹ (“Transcripts” and “Testimony”, respectively) as well as all associated exhibits,² dated 12 December 2006 and filed on 5 February 2007 (“Motion”),³

NOTING the response presented by the Accused on 15 June 2007 (“Response”),⁴

NOTING the motion for leave to reply and the reply filed by the Prosecution on 10 July 2007 pursuant to Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Reply” and “Rules”, respectively),⁵

CONSIDERING on the one hand that the Accused requests, owing to postal difficulties and the length of the Motion and its annexes, that the Response be accepted in spite of its presentation beyond the time-limit set out in Rule 126 *bis* of the Rules,

CONSIDERING on the other hand that owing to the length of the Motion and its annexes, the Accused requests leave to exceed the word limit set by the Practice Direction on the Length of Briefs and Motions (“Practice Direction”),⁶

¹ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54 (“*Milošević Case*”). See Motion, para. 22, specifying that the Testimony took place on 19, 23, 24, 25, 30 and 31 August 2005 and on 1, 5, 6, 7, 14, 15, 16 and 20 September 2005.

² The Accused did not accept the CD containing the exhibits referenced in Annex B of the Motion, see Response, p. 2, Reply, para. 4; see nonetheless Reply, para. 4 where the Prosecution pledges to provide the exhibits in question in hard copy.

³ Prosecution’s Motion to Admit into Evidence Transcripts of Evidence of Accused in the *Milošević Case*, 12 December 2006 (“Motion”).

⁴ Professor Vojislav Šešelj’s Response to the Prosecution’s Motion to Admit into Evidence Transcripts of Evidence of Accused in the *Milošević Case*, filed on 3 July 2007 with a translation in French dated 24 July 2007 (“Response”).

⁵ Prosecution’s Reply to the Response to the Prosecution’s Motion to Admit in Evidence Transcripts of Evidence of Accused in the *Milošević Case*, 10 July 2007 (“Reply”).

⁶ Practice Direction on the Length of Briefs and Motions (IT/184. Rev. 2), 16 September 2005.

CONSIDERING that at this stage of the proceedings, it is in the interests of the proper administration of justice and an expeditious trial to admit the Response in spite of exceeding the time-limit granted and the number of words set by the Practice Direction,

CONSIDERING that the Accused does not oppose the Motion but simply asks that the entire transcript of his testimony be admitted into evidence without the Prosecution's comments contained in Annex A of the Motion in the column entitled "Issues to which Extract is Relevant",⁷

CONSIDERING that in its Reply, the Prosecution reiterates that it requests the admission into evidence of all of the transcripts of the Accused's testimony and submits that under no circumstances will the document provided in Annex A of the Motion be tendered into evidence since its sole purpose is to provide the Chamber with examples of the relevance of the Accused's testimony in the *Milošević* Case,⁸

CONSIDERING that in light of the Response, it appears necessary to reaffirm *in limite* the basic distinction between the submissions used by the Accused and the Prosecution to present their respective arguments and the exhibits that each Party intends to tender into evidence to make its case,

CONSIDERING that Rules 89 (C) and (D) of the Rules provides that a Chamber may admit any relevant evidence which it deems to have probative value and may exclude any evidence if its probative value is substantially outweighed by the need to ensure a fair trial,

CONSIDERING that pursuant to Rule 95 of the Rules, no evidence shall be admissible if obtained by methods which cast substantial doubt on its reliability or if its admission runs counter to the integrity of the proceedings,

CONSIDERING, first, that the right of the Accused not to be compelled to testify against himself as guaranteed by Article 21 (4) (g) of the Statute of the Tribunal ("Statute") and Rule 90 (E) of the Rules⁹ has been respected insofar as the Accused

⁷ Response, p. 12 (French version).

⁸ Reply, para. 3.

⁹ Rule 90 (E) of the Rules: "A witness may object to making any statement which might tend to incriminate the witness. The Chamber may, however, compel the witness to answer the question.

willingly testified and was expressly informed that he was not obliged to answer any questions that might tend to incriminate him,¹⁰

CONSIDERING therefore that the admission into evidence of the Transcripts respects the procedural guarantees of the Statute and the Rules with regard to the rights of the Accused and the admission of evidence,

CONSIDERING furthermore that it is clear from established case law that the exhibits admitted during testimony “form an inseparable and indispensable part of the testimony”,¹¹ and as such only those exhibits tendered into evidence during the testimony of the Accused in the *Milošević* Case should be admitted,

CONSIDERING that the Chamber does not admit the documents contained in Annex B but were not used during the Testimony,

CONSIDERING, second of all, that the documents used during the Testimony fall into four categories:

- (i) For documents that were tendered but whose admission was denied, their admission is equally denied in the present case;
- (ii) For documents that were tendered during the Testimony and marked for identification, an evaluation of the Transcripts would only be partial without such documents¹² and for this reason the Chamber marks them for identification in the present case;
- (iii) For documents used during the Testimony but previously admitted through the testimony of another witness in the *Milošević* Case, the reasoning

Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony.”

¹⁰ *Milošević* Case, hearing of 19 August 2005, Transcript p. 42894.

¹¹ *Prosecutor v. Mladen Naletilić and Vinko 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, para. 9; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, First Decision on Prosecution’s Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92 bis, 12 June 2003, para. 30; see also *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero, Vinko Pandurević*, Case No. IT-05-88-T, Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 bis, 12 September 2006 (“*Popović* Decision”) , paras. 22-23.

¹² *Popović* Decision, para. 24.

set out in paragraph (ii) above also applies and, in addition, the Chamber is unable to examine the conditions in which these documents were admitted since the Prosecution has not provided the relevant transcripts; these documents will thus be marked for identification for the sole purpose of allowing a complete analysis of the Transcripts;

(iv) Finally, for documents admitted during the Testimony, the Chamber admits them as Prosecution exhibits.

FOR THE FOREGOING REASONS,

PURSUANT TO Article 21 (4) (g) of the Statute and Rules 89 (C), 89 (D), 90 (E) and 127 of the Rules,

PARTIALLY GRANTS the Motion and **ORDERS** that

(i) The following be admitted into evidence by the Prosecution:

- a. the Transcripts and
- b. the documents admitted during the Testimony, and

(ii) The following be marked for identification by the Prosecution:

- a. the documents used during the Testimony and previously admitted during the testimony of witnesses other than the Accused in the *Milošević* Case and
- b. the documents used during the Testimony and marked for identification.

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 thirtieth day of October 2007

At The Hague

The Netherlands

[Seal of the Tribunal]