



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: 26 August 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 26 August 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION REQUEST FOR LEAVE TO ADD AND
ADMIT A VIDEO WITH PROPOSED 65 TER EXHIBIT NUMBER 7543 TO
THE RULE 65 TER LIST**

The Office of the Prosecutor

Mr Mathias Marcussen

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”) filed on 21 May 2010 (“Motion”),¹ whereby the Prosecution respectfully moves that a video bearing proposed 65 *ter* number 7543 (“Video”) be added to the list of Prosecution exhibits disclosed pursuant to Rule 65 *ter* of the Rules of Procedure and Evidence (“Rules” and “65 *ter* List”) and admitted into evidence,

NOTING that Vojislav Šešelj (“Accused”) did not reply to the Motion within the time-limit of 14 days afforded him under Rule 126 *bis* of the Rules,²

CONSIDERING that, to this end, the Chamber must:

(1) pursuant to Articles 20(1) and 21(4)(b) of the Statute of the Tribunal, ensure that the rights of the Defence are appropriately respected by making certain that each exhibit is disclosed sufficiently in advance and will not hinder the Accused as he prepares his defence,³ and

(2) be satisfied, bearing in mind the specific circumstances of the case, that the Prosecution has shown good cause for amending its original list, and that the new exhibits are relevant and sufficiently compelling for the Chamber to authorize their inclusion,⁴

¹ “Prosecution Motion for Leave to Add Proposed Rule 65*ter* Exhibit Number 07543 to the Rule 65 *ter* Exhibit List and for its Admission from the Bar Table”, public document, 21 May 2010 (“Motion”).

² The Accused received a translation of the Motion on 21 June 2010, see Procès-verbal of reception filed on 4 June 2010.

³ See, for example, *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.1, “Decision on Appeals Against Decision Admitting Material Related to Borovčanin’s Questioning”, 14 December 2007, para. 37 (“*Popović* Decision”); *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1, “Decision on the Prosecution Motion to Amend its Rule 65 *ter* Exhibit List”, 21 December 2006, p. 2; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, “Decision on List of Exhibits”, 7 September 2007, p. 4.

⁴ See, for example, *Popović* Decision, para. 37.

CONSIDERING that the Chamber may, additionally, take into account additional criteria, such as the complexity of the case or even the date on which the said documents were obtained by the Prosecution,⁵

CONSIDERING that, with regard to the request for admission, the Chamber was likewise obliged to examine the proposed exhibit in light of Rules 89 and 95 of the Rules,

CONSIDERING that, at this stage of the proceedings, the Chamber has merely conducted a *prima facie* assessment of the relevance, reliability and probative value of the evidence tendered and that it has not proceeded to a conclusive assessment thereof, which will only be done at the end of the trial and in light of all of the evidence, both Prosecution and Defence, that has been admitted,⁶

CONSIDERING that the Prosecution contends that, in the Video, taken from a press conference given by the Accused on 11 November 1993, the Accused publicly gives an account of the cooperation then existing between the Serbian Radical Party (“SRS”) and the state instrumentalities of Serbia, during the conflict in Croatia, in Bosnia and in Herzegovina, and there shows documents relating to the operations jointly conducted by the volunteers of the SRS and the Serb Ministry of the Interior (“MUP”) in Skelani, including a document signed by Franko Simatović,⁷

CONSIDERING that the Prosecution contends that it obtained the Video from the BBC on 1 July 2008, that is, after the admission of Exhibits P49 and P55,⁸ and that the inclusion of the Video in the 65 *ter* List as well as its admission into evidence

⁵ “Decision on Restoring Exhibits to the Prosecution Exhibit List”, 11 April 2008, confidential document, citing *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, “Decision on Prosecution’s Motions for Leave to Amend Rule 65 *ter* Witness List and Rule 65 *ter* Exhibit List”, confidential document, 6 December 2006, p. 7.

⁶ *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, Case No. IT-04-74-T, “Decision on Documentary Evidence Presented by the Prosecution (Ljubuški Municipality Including the HVO Prison and Vitina-Otok Camp)”, 5 October 2007, p. 7.

⁷ Motion, para. 3.

⁸ The admission of Exhibits P49 and P55 was authorized by the Chamber on 30 October 2007 (*cf.* “Decision on Prosecution’s Motion to Admit into Evidence Transcripts of Vojislav Šešelj’s Testimony Given in the Milošević Case”, 30 October 2007, public document). Exhibit P 49 is in fact the transcript of the press conference to which the Video is related (P49, pp. 5-6) and Exhibit P55 is an article published in *Velika Srbija*, entitled “War Diaries of Chetnik Vojvoda Branslav Vakić”, which reproduces the certificate signed by Franko Simatović to which the Accused refers during the press conference (P55, p. 10).

could not for this reason be requested simultaneously with the admission of Exhibits P 49 and P55,⁹

CONSIDERING that, as the Prosecution puts it, this Video is likely to assist the Chamber in its assessment of Exhibits P55 and P49, with the latter being the transcript of the press conference the Video purports to cover,¹⁰

CONSIDERING that the Prosecution likewise contends that admitting the Video into evidence will not prejudice the Accused,¹¹

CONSIDERING that the Chamber observes that the Video, whose transcript was admitted into evidence as Exhibit P49, portrays the Accused at a press conference in November 1993, during which he describes the relationship between the SRS volunteers and the Yugoslav Army as well as the Territorial Defence and Serb police forces from the Serb Army of the Republika Srpska and the Serb Republic of Krajina, which is relevant under the Indictment,

CONSIDERING that the Chamber observes that the Video provides details missing from documents already admitted as exhibits,

CONSIDERING that in the case before us, the lateness of the request to add the Video to the 65 *ter* List and admit it into evidence is not problematic, given that the Video does relate to Exhibits P49 and P55, which have already been admitted in this case,

CONSIDERING, moreover, that the Chamber finds that the Video, *prima facie*, offers sufficient reliability and probative value,

CONSIDERING that the Chamber, by way of conclusion, finds that adding the Video to the 65 *ter* List and admitting it into evidence will not prejudice the Accused as he prepares his defence, which has yet to commence,

⁹ Motion, para. 4.

¹⁰ Motion, paras 1 and 4.

¹¹ Motion, para. 5.

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54, 65*ter* (E)(iii), 73 (A), 89 and 95 of the Rules of Procedure and Evidence,

GRANTS the Motion.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-sixth day of August 2010
At The Hague
The Netherlands

[Seal of the Tribunal]