



Case No.: IT-03-67-T
Date: 29 July 2011
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: **29 July 2011**

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION CONCERNING THE PROSECUTION'S REQUEST FOR
CORRECTION TO EXHIBIT P 1229**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

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 request, filed publicly on 23 March 2011, whereby the Office of the Prosecutor (“Prosecution”) asks that Exhibit P 1229 be corrected, such that it reflect the admission into evidence of 65 *ter* Document 1917¹ in lieu and in place of 65 *ter* Document 1918² (“Request”).³

II. PROCEDURAL BACKGROUND

2. On 17 May 2010, the Prosecution filed a motion, along with an annex, as a public document, seeking the admission of 180 exhibits tendered at the bar table, including 65 *ter* Document 1918 (“Motion of 17 May 2010”).⁴

3. On 25 August 2010, the Prosecution filed a *corrigendum* to the Motion of 17 May 2010, wherein the Prosecution signalled that pagination errors were present in the Motion of 17 May 2010 and that the *corrigendum* was intended to correct them (“Corrigendum”).⁵

4. On 23 December 2010, the Chamber, acting by a majority with Judge Lattanzi partially dissenting, granted the Motion of 17 May 2010 in part and ordered the

¹ 65 *ter* Document 1917, titled in e-Court as “Interview with Vojislav ŠEŠELJ Conducted by Toma DZADZIC and Published in NIN. Reprinted in Vojislav SESELJ’s Book “Red Tyrant from Dedinje”/Crveni tiranin sa Dedinja/, Belgrade, 1995”. The Chamber notes that 65 *ter* Document 1917 is Chapter XX of the Accused’s book entitled “Red Tyrant from Dedinje”.

² 65 *ter* Document 1918, titled in e-Court as “Interview with Vojislav ŠEŠELJ Published in Belgrade Weekly NIN. Reprinted in Vojislav ŠEŠELJ’s Book “Red Tyrant from Dedinje”/Crveni tiranin sa Dedinja/, Belgrade, 1995”. The Chamber notes that 65 *ter* Document 1918 is Chapter XIX of the Accused’s book entitled “Red Tyrant from Dedinje”.

³ “Prosecution’s Request for Correction to Exhibit P 1229”, public, 23 March 2011 (“Request”).

⁴ “Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public with an annex, 17 May 2010 (“Motion of 17 May 2010”); this being 65 *ter* Document 1918; see Annex A, p. 60.

⁵ “Corrigendum to Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public, 25 August 2010 (“Corrigendum”). The Chamber notes that these errors in referencing involved 18 documents, including 65 *ter* Document 1918, recast by the Prosecution as 65 *ter* Document 1917 without explanation and for which the Prosecution, as for the 17 other documents, alleged a mere pagination error. The Chamber points out that in reality the Prosecution, under cover of pagination issues and without informing the Chamber thereof, has proceeded to alter a document admission.

admission into evidence of 177 documents, including 65 *ter* Document 1918 (“Decision of 23 December 2010”).⁶

5. On 21 January 2011, the Prosecution filed a motion for partial reconsideration of the Decision of 23 December 2010 (“Motion of 21 January 2011”).⁷

6. In a decision dated 16 March 2011, the Chamber granted the Motion of 21 January 2011 and ordered the admission into evidence of the three documents denied admission under the Decision of 23 December 2010.⁸

7. On 23 March 2011, the Prosecution filed the Request as a public document.

8. Vojislav Šešelj (“Accused”) did not respond to the Request within the time-limit of 14 days running from his receipt of the BCS version, as granted to him by Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”).⁹

III. ARGUMENTS OF THE PARTIES

1. Arguments by the Prosecution

9. In its Request, the Prosecution indicates that it erroneously requested in the Motion of 17 May 2010 the admission into evidence of 65 *ter* Document 1918 and that it actually intended to request the admission into evidence of 65 *ter* Document 1917.¹⁰

10. The Prosecution submits that it sought to correct this error by means of the *Corrigendum*.¹¹

⁶ “Decision on Prosecution’s Second Motion for Admission of Evidence from the Bar Table and for an Amendment to the 65 *ter* Exhibit List”, public with annex and partially dissenting opinion by Judge Lattanzi, 23 December 2010 (“Decision of 23 December 2010”), para. 30.

⁷ “Prosecution’s Motion for Partial Reconsideration of the 23 December 2010 Decision on Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public, 21 January 2011, and “Prosecution’s Supplement to Motion for Partial Reconsideration of the 23 December 2010 Decision on Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public with a confidential annex, 4 February 2011 (“Motion of 21 January 2011”).

⁸ “Decision on Prosecution’s Motion for Reconsideration of the Decision on the Second Bar Table Motion filed 23 December 2010”, public, 16 March 2011.

⁹ The Accused received the BCS version of the Request on 30 March 2011 (see procès-verbal of reception) filed on 4 April 2011), and therefore had until 13 April 2011 to respond.

¹⁰ Request, para. 2.

¹¹ Request, para. 2.

11. The Prosecution states that the Chamber nonetheless admitted 65 *ter* Document 1918 into evidence, reproducing the error from the Motion of 17 May 2010 in the Decision of 23 December 2010, whereas the evidence deemed relevant by the Chamber was actually found in 65 *ter* Document 1917.¹²

12. The Prosecution adds that 65 *ter* Documents 1917 and 1918 are both interviews with the Accused, published in the Serbian weekly *Nin* and subsequently reproduced in a book by the Accused, entitled “Red Tyrant from Dedinje”.¹³

2. Arguments by the Accused

13. Although the Accused has not formally responded to the Request, the Chamber nevertheless notes that during the administrative hearing of 21 September 2010, the Accused contested the Motion of 17 May 2010 and objected more broadly to attempts to tender evidence from the bar table.¹⁴

IV. APPLICABLE LAW

14. Under Rule 89 (C) of the Rules, the Chamber may admit any relevant evidence it deems to have probative value.¹⁵ The Chamber may also, pursuant to Rule 89 (D) of the Rules, exclude any evidence whose probative value is substantially outweighed by the requirements of a fair trial. Further to this, the Chamber recalls that, although evidence must be reliable to be probative, it nevertheless suffices to establish its *prima facie* reliability.¹⁶ As concerns the condition of relevance, the moving party must be able to demonstrate with clarity and specificity how each document fits into its case.¹⁷

15. The Chamber likewise wishes to recall that there is a fundamental distinction between the admissibility of evidence and the weight to be assigned to that evidence

¹² Request, para. 3.

¹³ Request, para. 2.

¹⁴ Hearing of 21 September 2010, French transcript 16411-16412.

¹⁵ *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, “Decision on Prosecution Motion to Admit Documents in Evidence”, public, 9 May 2008, para. 8.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

at the conclusion of the trial.¹⁸ At the current stage of the proceedings, the Chamber conducts no definitive assessment of the relevance, reliability or the probative value of the evidence at issue. That determination will only take place at the close of the trial and in light of all of the evidence introduced by the parties, both Prosecution and Defence.

V. DISCUSSION

16. The Chamber first observes that in its Decision of 23 December 2010, it did in fact admit 65 *ter* Document 1918 into evidence and not 65 *ter* Document 1917.¹⁹

17. The Chamber then wishes to stress that in its *Corrigendum*, the Prosecution stated that the errors contained in the Motion of 17 May 2010 were merely errors in pagination²⁰ and that the Prosecution did not clearly alert the Chamber concerning its erroneous request to admit into evidence of 65 *ter* Document 1918, in lieu and in place of 65 *ter* Document 1917.

18. The Chamber recalls on this point that it is of prime importance, in light of the principle of judicial economy and in keeping with Article 20 of the Statute, for the parties, the Prosecution in this case, to bring properly supported, clear motions and *corrigenda*, to make it easier for the Chamber to rule on them.

19. In any event, the Chamber stresses that, in admitting a document, the Chamber does not rely solely on pertinent facts to which one of the parties directs its attention.²¹ The Chamber thus found that 65 *ter* Document 1918 pertained to a

¹⁸ “Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial”, public, 15 November 2007, Annex, para. 2.

¹⁹ See Decision of 23 December 2010, para. 30.

²⁰ See in this connection footnote 5. See also *Corrigendum*, para. 2: “[i]n the course of conducting evidence review, it has come to the Prosecution’s attention that there are several erroneous page numbers in the filing due to different spacing formats in copies of files uploaded to different Tribunal servers”.

²¹ Third Amended Indictment, filed on 7 December 2007 (“Indictment”). The Chamber recalls that in the Decision of 23 December 2010, it had found that certain documents, including 65 *ter* Document 1918, could be admitted into evidence, for even if their date fell outside of the relevant time period under the Indictment and even if they contained statements by the Accused which were partially or fully hearsay, they “deal with a fundamental issue in the Indictment, that of the Accused’s ideology, the concept of the ‘Greater Serbia’”, the discrimination against the non-Serb populace, the formation and organisation of the Serbian Chetnik Movement and of the Serbian Radical Party, the joint criminal enterprise alleged in the Indictment. The Chamber observes that 65 *ter* Document 1918 pertains to the implementation of a joint criminal enterprise as alleged in the Indictment, because it concerns the ties between the Accused and Slobodan Milošević.

fundamental issue in the Indictment, meeting the criteria of reliability, of probative value and of relevance.

20. At the same time, the Chamber points out that when the Prosecution requested partial reconsideration of the Decision of 23 December 2010 in the Motion of 21 January 2011, it did not raise the issue of which the Chamber is presently seized through the Request.

21. Nevertheless, the Chamber reviewed *65 ter* Document 1917, in light of the written pleadings brought by the Prosecution in the Request.

22. The Chamber points out that *65 ter* Document 1917 is a chapter from the Accused's book entitled "Red Tyrant from Dedinje", which reproduces an interview with the Accused, that was published in *Nin*.²² The Chamber concludes that, although it falls outside of the temporal scope of the Indictment and describes statements by the Accused which are partial or complete hearsay, this document pertains to a fundamental issue in the Indictment.²³

23. The Chamber for this reason considers that *65 ter* Document 1917 satisfies the criteria of reliability, probative value and relevance, and may be admitted into evidence under reference number P 1229, in lieu and in place of *65 ter* Document 1918.

24. The Chamber finds that, inasmuch as the Prosecution acknowledges having erroneously requested the admission of *65 ter* Document 1918, it is proper to rescind its admission into evidence.

VI. DISPOSITION

25. FOR THE FOREGOING REASONS

GRANTS the Request.

²² See *supra*, footnote 1.

²³ *65 ter* Document 1917 actually concerns the contacts between the Accused and Slobodan Milošević as well as the Accused's dispatch of 30,000 armed volunteers.

ORDERS the admission into evidence of Document 65 *ter* 1917 under reference number P 1229, in lieu and in place of Document 65 *ter* 1918.

ORDERS the admission into evidence of Document 65 *ter* 1918 rescinded.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-ninth day of July 2011
At The Hague
The Netherlands

[Seal of the Tribunal]