

UNITED  
NATIONS

IT-03-67-PT  
D5 - 1/19858 BIS  
29 June 2007

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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: 26 June 2007

ENGLISH

Original: French

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**BEFORE THE PRE-TRIAL JUDGE**

**Before: Judge Jean-Claude Antonetti**

**Registrar: Mr Hans Holthuis**

**Order of: 26 June 2007**

**THE PROSECUTOR**

**v.**

**VOJISLAV ŠEŠELJ**

***PUBLIC DOCUMENT***

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**ORDER CLARIFYING THE DECISION REGARDING FORM OF  
DISCLOSURE**

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**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 (“Tribunal”);

**SEIZED** of the motion for review and clarification of the “Decision on Motion Number 289 Regarding Form of Disclosure” filed by the Office of the Prosecutor (“Prosecution”) on 14 June 2007 (“Motion” and “Decision on Form of Disclosure”, respectively);

**NOTING** the Decision on Form of Disclosure of 7 June 2007, whereby the pre-trial Judge ordered the Prosecution

to disclose, as soon as possible, in hard-copy and in a language the Accused understands:

- (i) the Rule 66 (A) (i) documents;
- (ii) the Rule 66 (A) (ii) documents;

[and] to disclose, “as soon as practicable”, in hard-copy and in a language the Accused understands, the Rule 68 (i) documents;<sup>1</sup>

**CONSIDERING** that, as a matter of form, the Prosecution argues that by rendering the Decision on Form of Disclosure, the pre-trial Judge exceeded the authority delegated to him by the President of Trial Chamber III (“Chamber III”);<sup>2</sup>

**CONSIDERING** that in its order of 22 June 2007 (“Order of 22 June”), Chamber III reiterated that the pre-trial Judge was fully competent to render the Decision on Form of Disclosure;<sup>3</sup>

**CONSIDERING** that, as a matter of substance, the Prosecution asserts that the Decision on Form of Disclosure is erroneous (i) because it conflicts with a decision rendered by Trial Chamber I (“Chamber I”) on 22 November 2006 permitting

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<sup>1</sup> Decision on Motion Number 289 Regarding Form of Disclosure, 7 June 2007 (“Decision on Form of Disclosure”), para. 37.

<sup>2</sup> Motion, paras. 1, 6-9; Order Entrusting Functions to Pre-Trial Judge, 27 February 2007.

disclosure in audio format (on CD) of the transcripts of witness testimony of which there were no paper copies in BCS,<sup>4</sup> and (ii) because it fails to take into account some practical considerations, such as the cost of transcribing onto paper the audio recordings of the BCS transcripts, and to determine who will bear the said costs;<sup>5</sup>

**CONSIDERING** that in its Decision of 22 November 2006 regarding the disclosure of transcripts of prior testimony in audio format (“Decision of 22 November”), Chamber I ordered that the said materials could be disclosed to the Accused in audio format, provided the Accused was given reasonable and necessary assistance to make effective use of them;<sup>6</sup>

**CONSIDERING** that Chamber I further ordered the Prosecution to examine (i) whether the content of the transcripts it seeks to admit under Rule 92 *bis* of the Rules of Procedure and Evidence (“Rules”) could be reduced, and (ii) whether some of the witnesses whose evidence it seeks to admit under Rule 92 *bis* of the Rules could be called to testify *viva voce*;

**CONSIDERING** first that the Decision of 22 November was the logical counterpart to the Decision on Form of Disclosure rendered by Trial Chamber I on 4 July 2006 (“First Decision on Form of Disclosure”), which considered that it was possible to disclose, in electronic format and in BCS, Rule 66 (A) and (B) material and Rule 68 (i) material;<sup>7</sup>

**CONSIDERING** that the Appeals Chamber

notes that although the present Decision does not find that the Trial Chamber incorrectly exercised its discretion in the Impugned Decision, this does not prevent Mr. Šešelj from applying for a modification of the Impugned Decision to the newly assigned Trial Chamber,

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<sup>3</sup> Order of 22 June, p. 2.

<sup>4</sup> Motion, paras. 4, 13.

<sup>5</sup> *Id.*, paras. 4, 14-15.

<sup>6</sup> “Decision on Provision of Previous Testimony in Audio Format”, 22 November 2006, *see also* “Corrigendum to Decision on Provision of Previous Testimony in Audio Format”, 23 November 2006.

<sup>7</sup> Decision on Form of Disclosure, p. 10.

which might consider, in its discretion, a different trial management approach than that followed in the Impugned Decision;<sup>8</sup>

**CONSIDERING**, therefore, that by rendering the Decision on Form of Disclosure, the pre-trial Judge was not affirming that the First Decision on Form of Disclosure was incorrect, but was instead exercising the opportunity, as the Appeals Chamber suggested, to “consider [...] a different trial management approach”;<sup>9</sup>

**CONSIDERING** that the pre-trial Judge shall not recall herein the reasons he considers it essential for Rule 66 (A) (i), Rule 66 (A) (ii), and Rule 68 (i) materials to be disclosed in hard-copy and in a language the Accused understands;

**CONSIDERING** that the pre-trial Judge is fully aware that disclosure in a language the Accused understands and in hard-copy will be more difficult for certain categories of documents than others, however, even for those documents, the Prosecution has a duty to provide the Accused, who is self-representing, “access to the documents essential for the preparation of his defence in the format he believes will help him to effectively use them”;<sup>10</sup>

**CONSIDERING** that it is therefore up to the Prosecution to find ways to effectively execute the Decision on Form of Disclosure, which applies to all of the Rule 66 (A) (i), Rule 66 (A) (ii), and Rule 68 (i) materials, including transcripts which exist only in hard-copy in one of the two official languages of the Tribunal;

**CONSIDERING** that one possible approach could be to reduce the size of transcripts and the number of witnesses that the Prosecution intends to present under Rule 92 *bis* of the Rules because, as Chamber I already noted, the admission of evidence in this case via this mode could lead to delays which run contrary to the very spirit of that provision of the Rules;<sup>11</sup>

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<sup>8</sup> Decision on Vojislav Šešelj’s Interlocutory Appeal Against the Trial Chamber’s Decision on Form of Disclosure, 17 April 2007, para. 20.

<sup>9</sup> *Ibid.*

<sup>10</sup> Decision on Form of Disclosure, para. 35.

<sup>11</sup> Decision of 22 November, para. 18.

**FOR THE FOREGOING REASONS**

**PURSUANT TO** Article 21 of the Statute and Rules 66 and 68 of the Rules,

**DENY** the Motion.

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

/signed/

Jean-Claude Antonetti

Pre-Trial Judge

Done this twenty-sixth day of June 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**