UNITED NATIONS

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 July 2010

Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: **Mr John Hocking**

Order of: 5 July 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

ORDER ON PROSECUTION'S MOTION TO PROHIBIT ACCUSED FROM PUBLICISING INFORMATION DISCLOSED SOLELY FOR PURPOSES OF HIS DEFENCE

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

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 filed on 23 June 2010 by the Office of the Prosecutor ("Prosecution") seeking that the Chamber upholds the previous decisions restricting Vojislav Šešelj ("Accused") from disseminating documents disclosed to him for the purposes of his defence and orders the Accused to use the documents disclosed to him pursuant to Rule 66 (B) of the Rules of Procedure and Evidence ("Rules") solely for the preparation of his defence ("Motion"),[1]

NOTING the "Decision on Prosecution's Motion for Order of Non-Disclosure", rendered publicly on 13 March 2003 in the present case ("Decision of 13 March 2003"),

NOTING "Decision on 'Prosecution's Motion for Non-Disclosure of Materials Provided Pursuant to Rules 66 (A) (iii) and 68 and for Protective Measures for Witnesses during the Pre-Trial Phase'", rendered publicly on 11 February 2004 in the present case ("Decision of 11 February 2004"),

NOTING the Oral Decision rendered publicly by this Chamber on 14 June 2010 authorising the Accused to publish his books at his own risk and peril without it being necessary for him to submit them first to the Chamber or the Registry for verification, reminding him nevertheless that the divulging of confidential information in violation of the protective measures ordered by a Chamber is punishable by contempt of court pursuant to Rule 77 of the Rules of Procedure and Evidence ("Decision of 14 June 2010"),

NOTING the "Practice Direction Establishing Restrictions on Dissemination of Material Disclosed to the Defence by the Prosecutor on the 'Electronic Disclosure System'", adopted on 6 November 2003 ("Practice Direction of 2003") pursuant to

[1] "Prosecution's Urgent Motion for an Order Prohibiting the Accused from Publicising Disclosure Material", confidential, 23 June 2010, paras 1, 11, 21.

which documents disclosed through the Electronic Disclosure System must not be disclosed publicly,

NOTING Articles 20 (1), 21 (2) and 22 of the Tribunal's Statute ("Statute"),

NOTING Rules 19, 53 (A), 54 and 75 of the Rules,

CONSIDERING that the Prosecution cites several grounds in support of its Motion,

CONSIDERING that the Prosecution argues firstly that the Accused has shown his intention to continue to disseminate documents disclosed to him for the purposes of his defence by mocking their confidential nature and the security of witnesses in this case, in view of his previous conduct and his recent statements during the hearings of 11 May and 14 June 2010,[2]

CONSIDERING that the Prosecution argues secondly that the Decision of 13 March 2003 and the Decision of 11 February 2004 ordering the Accused not to divulge the documents disclosed pursuant to Rules 66 (A), 66 (B) and 68 and the Practice Direction of 2003 disclosed to the Accused in BCS on 18 September 2007 remain applicable in this case,[3]

CONSIDERING that the Prosecution argues next that the documents disclosed pursuant to the Rules solely for the preparation of the Accused's defence ("Documents") must remain confidential pursuant to Rules 23, 53 (A), 54 and 75 of the Rules, the case-law and for the sake of coherence with the "Decision Regarding Public Access to Trial Exhibits", rendered publicly by the Chamber on 18 November 2008,[4]

CONSIDERING that the Prosecution also claims that the Accused does not require the public disclosure of information or Documents disclosed by the Prosecution during the trial for the preparation of his defence, and that the risks associated with

[2] Motion, paras 2-6.
[3] Motion paras 7-10.
[4] Motion, paras 12-17.

the publicising of this information or Documents, notably relating to witness security, justify the Chamber rendering a new order to uphold the previous ones,[5]

CONSIDERING that the Prosecution finally informs the Chamber that it has the intention of notifying third parties that they may be prosecuted for contempt of court pursuant to Rule 77 of the Rules if they participate in the publicising of this information or Documents,[6]

CONSIDERING that the Prosecution requests consequently that the Chamber: (i) reaffirms the Decision of 13 March 2003 and the Decision of 11 February 2004; (ii) reaffirms the applicability of Practice Direction of 2003 in the present case; (iii) orders the Accused not to divulge the documents disclosed to him by the Prosecution pursuant to Rule 66 (B) of the Rules to third parties; (iv) if the Accused must disclose such Documents to third parties, when this is directly and specifically necessary for the preparation of his defence, he must inform the third parties that they must keep this information confidential, not disclose it to any other person and to return it to the Accused when it is no longer necessary for the preparation of his defence; (v) recalls the dispositions of Rule 77 of the Rules,[7]

CONSIDERING that the Chamber deems that the Decision of 13 March 2003 and the Decision of 11 February 2004 ordering the Accused not to divulge the documents disclosed to him by the Prosecution pursuant to Rules 66 (A), 66 (B) and 68 are still applicable in the current case and must be respected by the Accused,

CONSIDERING that the Chamber deems that the Practice Direction of 2003 – which is compatible with the dispositions of the Statute and the Rules and which was disclosed to the Accused in a language that he understands, namely BCS, on 18 September 2007 – is applicable in the current case and must, therefore, be respected by the Accused,

[5] Motion, paras 18-19.
[6] Motion, para. 20. The Chamber considers that, due to the Prosecution's intention, it is appropriate to file the decision publicly in order to ensure that third parties are informed of it.
[7] Motion, para. 21.

CONSIDERING that the Chamber notes that all the decisions and texts covered in this decision are public and, in particular, that the Decision of 14 June 2010 was rendered orally during open session and rebroadcast on Serbian television,

CONSIDERING that the Chamber deems, consequently, that the Accused and the third parties are already perfectly informed that divulging information or Documents that are confidential and/or in violation of orders issued by Tribunal judges is liable for contempt charges pursuant to Rule 77 of the Rules, namely a sentence of seven years imprisonment and/or a fine of 100,000 Euro,

CONSIDERING that the Chamber deems furthermore that the Accused was already informed about the instances when he is allowed to disclose such information or Documents to third parties, namely when this is directly and specifically necessary for the preparation of his defence, and that he must inform third parties that they must keep this information confidential, not disclose it to anyone else and to return it when it is are no longer necessary for the preparation of his defence,[8]

CONSIDERING that the Chamber deems that the Prosecution can already, if it so wishes, assure itself that third parties are perfectly informed in regard to this without the Chamber having to rule again on the issue,

FOR THE FOREGOING REASONS

PURSUANT TO Articles 20 (1), 21 (2) and 22 of the Statute and Rules 19, 53 (A), 54, 73 and 75 of the Rules.

DECLARES the Motion moot.

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

/signed/
Jean-Claude Antonetti

[8] This was specified in the "Decision on Adopting Protective Measures", confidential, 30 August 2007.

Presiding Judge

Done this fifth day of July 2010
At The Hague
The Netherlands

[Seal of the Tribunal]