



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-03-67-PT
Date: 3 June 2005
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge Jean Claude Antonetti
Judge Kevin Parker

Registrar: Mr. Hans Holthuis

Decision of: 3 June 2005

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON REQUESTS BY THE ACCUSED FOR TRIAL
CHAMBER II TO ISSUE SUBPOENA ORDERS**
(Submissions Number 77, 78 and 79)

The Office of the Prosecutor:

Ms. Hildegard Uertz-Retzlaff
Mr. Ulrich Mussemeyer
Mr. Daniel Saxon

The Accused:

Mr. Vojislav Šešelj

Standby counsel:

Mr. Tjarda Eduard van der Spoel

TRIAL CHAMBER II (“Trial 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”):

BEING SEISED OF the “Request of the Accused for Trial Chamber II to Issue a Binding Order Under Pain of Sanction (Subpoena) Pursuant to Rule 54 of the Rules of Procedure and Evidence”¹ (“First Request”), the “Motion by the Accused for Trial Chamber II to Issue a Subpoena Pursuant to Rule 54 of the Rules of Procedure and Evidence”² (“Second Request”), and the “Request by the Accused for Trial Chamber II to Issue a Binding Order Subject to Penalty (Subpoena) to the Prosecutor Pursuant to Rule 54 of the Rules of Procedure and Evidence”³ (“Third Request”), all filed by the Accused on 22 March 2005, wherein the Accused requests that the Trial Chamber issue binding orders pursuant to Rules 54 and 54*bis* of the Rules of Procedure and Evidence (“Rules”)

(1) to the governments of the United States, United Kingdom, Germany, France, Italy, Austria, Hungary, Croatia and the Federation of Bosnia and Herzegovina for the production to the Trial Chamber of all documents and information which are in the possession of their respective intelligence services mentioning the Accused or the Serbian Radical Party, especially information relating to the conflict in the former Yugoslavia, including statements, plans, programmes, transcripts and intercepts, from the first occurrence of such mentioning until present (First Request);

(2) to Pope John Paul II., all cardinals, archbishops, bishops and dignitaries of the Roman Catholic Church for the production to the Trial Chamber of all documents and information in its possession relating to the conflict in the former Yugoslavia, including statements, plans, programmes and stenographic records, from the beginning of the pontificate of John Paul II. until present (Second Request);

(3) to the Office of the Prosecutor (“Prosecution”) for the production to the Accused of all documents on the formation of the “Serbian guard” and “Panthers” paramilitary groups and their participation in the conflict in the former Yugoslavia (Third Request);

NOTING the “Prosecution Response to ‘Request of the Accused for Trial Chamber II to Issue a Binding Order Under Pain of Sanction (Subpoena) Pursuant to Rule 54 of the Rules of Procedure and Evidence’” (“First Response”)⁴, the “Prosecution Response to ‘Motion by the Accused for Trial Chamber II to Issue a Subpoena Pursuant to Rule 54 of the Rules of Procedure and Evidence’”

¹ Submission no. 77.

² Submission no. 78.

³ Submission no. 79.

⁴ The First Response also contains confidential annexes.

(“Second Response”), and the “Prosecution Response to ‘Request by the Accused for Trial Chamber II to Issue a Binding Order Subject to Penalty (Subpoena) to the Prosecutor Pursuant to Rule 54 of the Rules of Procedure and Evidence’” (“Third Response”), all filed on 11 April 2005, in which the Prosecution

(1) submits that the documents and the information sought by the Accused in the First Request are not identified with a satisfactory degree of specificity,⁵ nor has the Accused taken reasonable steps to obtain the material sought,⁶ moreover, that certain claims of the Accused are of an abusive nature,⁷ the Prosecution therefore suggesting to deny the First Request;

(2) submits that the Second Request is frivolous and abusive, the Accused seeking information for political purposes rather than for the investigation, preparation or conduct of his trial,⁸ moreover, that the documents and the information sought by the Accused are not identified with a satisfactory degree of specificity,⁹ nor has he taken reasonable steps to obtain them,¹⁰ the Prosecution therefore suggesting to deny the Second Request;

(3) submits that also the Third Request is frivolous and abusive, the Accused seeking information for political purposes rather than for the investigation, preparation or conduct of his trial,¹¹ moreover, that the Third Request is wrongly submitted pursuant to Rule 54*bis* considering that the addressee of the requested order is the Prosecution, not a State, however, the Prosecution having fulfilled its disclosure obligations,¹² suggests to deny the Third Request;

NOTING that according to Rule 54*bis*(A) of the Rules, a party requesting an order under Rule 54 of the Rules that a State produce documents or information shall apply in writing to the relevant Judge or Trial Chamber, and shall: (i) identify as far as possible the documents or information to which the application relates; (ii) indicate how they are relevant to any matter in issue before the Judge or Trial Chamber and necessary for a fair determination of that matter; and (iii) explain the steps that have been taken by the applicant to secure the State’s assistance;

⁵ First Response, paras 8-12.

⁶ First Response, paras 13-20.

⁷ *Inter alia*, the claim that the Prosecution’s case is based on intelligence information First Request, p. 6; First Response, para. 23.

⁸ Second Response, paras 4-6.

⁹ Second Response, paras 12-15.

¹⁰ Second Response, paras 17-18.

¹¹ Third Response, paras 4-7.

¹² Third Response, paras 12-13.

CONSIDERING that Rule 54bis(A)(i) of the Rules has been interpreted by the Appeals Chamber to require that the applicant “must identify specific documents and not broad categories”.¹³ Documents must be identified as far as possible and in addition be limited in number.¹⁴ Furthermore, the Trial Chamber may, however, considering the need to ensure a fair trial, allow the omission of those details if it is satisfied that the party requesting the order, acting *bona fide*, has no means of providing these particulars;¹⁵

CONSIDERING further that Rule 54bis(A)(i) has also been interpreted by the Appeals Chamber to require from the applicant to set out succinctly the reasons why documents are deemed relevant to the trial; if that party considers that setting forth the reasons for the request might jeopardise its prosecutorial or defence strategy, it should say so and at indicate the general grounds on which its request rests; finally, that such a request must not be unduly onerous;¹⁶

CONSIDERING that in his First Request and in his Second Request, the Accused seeks access to entire categories of material in a typical unlimited fishing expedition manner, without bothering to identify as far as possible the documents he seeks and without providing any evidence showing what steps he has taken to secure the assistance of the States mentioned in his two Requests;

FINDING that therefore, the First Request and the Second Request do not meet the requirements of Rule 54bis(A) of the Rules and that therefore the Requests formulated under Rule 54 of the Rules cannot be acceded to;

CONSIDERING with respect to the Third Request that, insofar as it may involve material relevant to the defense of the Accused to the present charges, a matter which is not in any way supported in the application, it would appear to be within the scope of the ordinary disclosure obligations of the Prosecution under the Rules and until those obligations have been satisfied, it would be premature to give any further consideration to that issue;

CONSIDERING that the Accused has not provided any basis for determining whether the material is or is not relevant and certainly the Accused has not provided any support for an order outside the scope of the ordinary disclosure under the Rules;

¹³ *Prosecutor v. Blaškić*, Case No. IT-95-14-AR108bis, Judgement on the Request of the Republic of Croatia for Review of Trial Chamber II of 18 July 1997, 29 October 1997 (“*Blaškić* Judgement on Request for Review”), para. 32; *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-AR108bis, Decision on the Request of the Republic of Croatia for Review of a Binding Order, 9 September 1999 (“*Kordić* Decision”), paras 34-44.

¹⁴ *Kordić* Decision, para. 41.

¹⁵ *Blaškić* Judgement on Request for Review, para. 134.

¹⁶ *Kordić* Decision, para. 41 and fn. 15.

FINDING that therefore this Third Request cannot be acceded to by this Trial Chamber as filed;

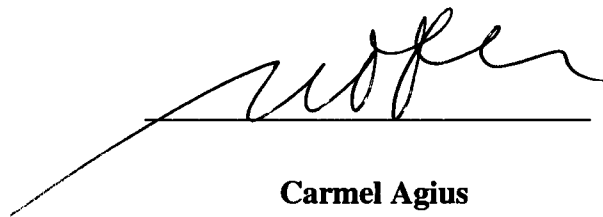
PURSUANT TO Rules 54 and 54*bis* of the Rules

HEREBY denies the First Request, the Second Request and the Third Request.

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

Dated this third day of June 2005,

At The Hague,
The Netherlands

A handwritten signature in black ink, appearing to read 'Carmel Agius', is written over a horizontal line. The signature is fluid and cursive.

Carmel Agius
Presiding Judge

[Seal of the Tribunal]