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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: IT-03-67-PT

Date: 10 November 2006

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Patrick Robinson
Judge Frank Höpfel

Registrar: Mr Hans Holthuis

Decision of: 10 November 2006

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

**DECISION ON REQUEST BY THE ACCUSED FOR THE TRIAL CHAMBER TO
ISSUE BINDING ORDERS TO STATES (SUBMISSION NUMBER 143)**

Office of the Prosecutor

Ms Hildegard Uertz-Retzlaff
Mr Dan Saxon
Mr Ulrich Müssemer
Ms Melissa Pack

The Accused

Mr Vojislav Šešelj

Standby Counsel for the Accused

Mr David Hooper
Mr Andreas O'Shea

1. The Chamber is seised of the “Request by the Accused for Trial Chamber II to Issue a Binding Order (Subpoena) Pursuant to Rule 54 of the Rules of Procedure and Evidence”, dated and submitted to the Registry on 28 March 2006 and, after translation, filed on 12 April 2006.

2. The Accused requests the Trial Chamber to issue binding orders instructing the United States of America, the United Kingdom, Germany, France, Italy, Austria, Hungary, Croatia, and the Federation of Bosnia and Herzegovina to provide to him, within 30 days, copies of documents concerning:

Šešelj’s men (for the period from 1990 to 1996), Žute Ose (for the period from 1990 to 1996), Žuti Mravi (for the period from 1990 to 1996), Beli Orlovi (for the period from 1990 to 1996), Vojislav Šešelj, the Serbian Radical Party (for the period from 1990 to 1996), Serbian Chetniks (for the period from 1990 to 1992), the Serbian Renewal Movement (for the period from 1990 to 1996), Greater Serbia (for the period from 1991 to 1996), the Serbian Volunteers’ Guard (for the period from 1991 to 1996) and Vuk Drašković.¹

2. In support of his request, the Accused submits that: (a) he has no way of obtaining “evidence in possession of foreign countries”, except by making a request pursuant to Rules 54 and 54 *bis* of the Tribunal’s Rules of Procedure and Evidence;² (b) he applied for the requested documents to the US State Department, the US Central Intelligence Agency, the US Federal Bureau of Investigation, and the US Military Intelligence Service; (c) he received responses from these agencies; (d) the US State Department response shows, according to the Accused, that the requested documents exist;³ (e) this agency requested the payment of a fee before supplying the documents;⁴ (f) the Accused has no financial means at his disposal and can therefore not pay the requested fee;⁵ and, (g) the “competent organs” of the other countries to which he sent “identical or similar requests [...] responded in the same way”.⁶

3. The Accused further submits that the requirements of Rules 54 and 54 *bis* of the Rules have been fulfilled because: (a) he has identified “as much as possible” the documents he requires, and more specific references could not have been provided “since these are secret

¹ Request, p. 10.

² Ibid, p. 3.

³ Ibid, p. 9.

⁴ Ibid, p. 4.

⁵ Ibid, p. 9.

⁶ Ibid.

data of the services”, to which he has no access;⁷ (b) he has taken reasonable steps to obtain the documents himself; (c) the requested documents are relevant since they relate to the time period covered by the Modified Amended Indictment.⁸

4. In the “Prosecution’s Response to ‘Request by the Accused for Trial Chamber II to Issue a Binding Order (Subpoena) Pursuant to Rule 54 of the Rules of Procedure and Evidence’”, dated 25 April 2006 and filed on 28 April 2006, the Prosecution submits that the Accused’s request fails to meet the requirements of Rule 54 *bis*. In particular, the Prosecution argues that a “potentially very large number of documents” fall outside the relevant time period in the Indictment and that the Accused does not provide any reasons for seeking those documents.⁹ It further holds that the Accused has not shown that the requested documents regarding Vuk Drašković are relevant to any matter in issue in the case.¹⁰ In addition, the Prosecution states that the Accused has not taken the available reasonable steps as required by Rule 54 *bis* (A)(iii) and Rule 54 *bis* (B)(ii).¹¹

5. Rule 54 of the Tribunal’s Rules provides that “At the request of either party or *proprio motu*, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial”. Rule 54 *bis* states, in relevant part, that:

(A) A party requesting an order under Rule 54 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.

(B) The Judge or Trial Chamber may reject an application under paragraph (A) *in limine* if satisfied that: (i) the documents or information are not relevant to any matter in issue in the proceedings before them or are not necessary for a fair determination of any such matter; or, (ii) no reasonable steps have been taken by the applicant to obtain the documents or information from the State.

⁷ Ibid.

⁸ Ibid.

⁹ Response, para. 6.

¹⁰ Response, para. 7.

¹¹ Response, paras. 8–11.

6. Rule 54 *bis* orders are to “be reserved for cases in which they are really necessary”.¹² The Appeals Chamber has held that “a request for production under Rule 54 *bis* should seek to ‘identify specific documents and not broad categories’. In other words, documents must be identified as far as possible and in addition be limited in number [... but] a category of documents may be requested as long as it is ‘defined with sufficient clarity to enable ready identification’ by a state of the documents falling within that category”.¹³ If the requesting party is unable to specify the title, date, and author of the requested documents, but provides an explanation and identifies the requested documents in some appropriate manner, a Trial Chamber may, in consideration of 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 those particulars”.¹⁴

7. Regarding the Accused’s requests to the agencies of the United States, the Trial Chamber disagrees with the Accused that he has identified as far as possible the documents to which his application relates. The Accused has made a largely unrestricted request for documents relating to a number of paramilitary groups and political parties. Although each group of documents is to some degree confined temporally and by subject matter, the scope of the request remains very broad. The requested documents relating to “Vojislav Šešelj” and “Vuk Drašković” are not subject to any limitation. As such, the Accused’s request to the state agencies does not “enable ready identification” of the requested documents.¹⁵ Even if the documents are “secret”, the Accused could have specified the topics of his interest more narrowly than he has. Furthermore, the Trial Chamber finds that it cannot be concluded, as submitted by the Accused, that the US State Department has verified the existence of the requested documents or confirmed that the Accused has identified an appropriate and manageable class of documents. The agency seems only to have demanded a standard fee before processing the application further.

¹² *Prosecutor v. Milutinović et al.*, Decision on Request of the United States of America for Review, 12 May 2006 (“Milutinović Decision”), para. 27; *Prosecutor v. Blaškić*, 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. 31.

¹³ Milutinović Decision, para. 15; Blaškić Judgement on Request for Review, para. 32; *Prosecutor v. Kordić and Čerkez*, Decision on the Request of the Republic of Croatia for Review of a Binding Order, 9 September 1999, para. 39.

¹⁴ Blaškić Judgement on Request for Review, para. 32.

¹⁵ Milutinović Decision, para. 15.

8. The Accused has submitted that the requested documents are needed “to use as evidence or as reference for collecting other evidence to support his defence”.¹⁶ However, he has provided no explanation as to why he considers that they are relevant to any matter in issue or necessary for a fair determination of that matter. As a result of the lack of specificity in the Accused’s request, the Trial Chamber is not satisfied that the requested documents are relevant to any matter in issue in the present case or that they are necessary for a fair determination of any such matter.

9. In accordance with Rule 54 *bis* (B) of the Rules and in light of the above finding, the Trial Chamber does not need to address the question of whether the Accused has taken reasonable steps to obtain the documents and information from the state agencies.

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 54 and 54 *bis* of the Rules, the Trial Chamber hereby,

DENIES the Request.

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



Judge Alphons Orié
Presiding

Dated this tenth day of November 2006
The Hague
The Netherlands

[Seal of the Tribunal]

¹⁶ Request, p. 2.