



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: 31 May 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Jean-Claude Antonetti, Pre-Trial Judge
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 31 May 2007

PROSECUTOR
v.
VOJISLAV ŠEŠELJ

PUBLIC FILING

**DECISION ON THE ACCUSED'S MOTION TO SET A TIME LIMIT FOR
CHALLENGES TO THE FORM OF THE REDUCED MODIFIED
AMENDED INDICTMENT (SUBMISSION NUMBER 287)**

Office of the Prosecutor

Ms. Christine Dahl

The Accused

Mr. Vojislav Šešelj

THIS 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 “Motion for Trial Chamber III to Set a Time Limit for Filing a Challenge to the Reduced Modified Amended Indictment (Submission number 287)” submitted by Vojislav Šešelj (“Accused”) on 25 April 2007 and filed on 9 May 2007 (“Motion”), in which the Accused seeks to file a preliminary motion within the period of 30 days prescribed in Rules 50(C) and 72 of the Rules of Procedure and Evidence (“Rules”), alleging defects in the form of the Reduced Modified Amended Indictment (“Indictment” and “Requested Relief”, respectively);¹

NOTING the “Prosecution’s Response to Accused’s Motion for Trial Chamber III to Set a Time Limit for Filing a Challenge to the Reduced Amended Indictment” filed by the Office of the Prosecutor (“Prosecution”) on 23 May 2007 (“Response”), wherein the Prosecution does not oppose the Requested Relief;²

NOTING Rule 50(C) which provides that “[the] accused shall have a further period of thirty days in which to file preliminary motions pursuant to Rule 72 in respect of the new charges” and Rule 72(A) which characterises preliminary motions as motions which “allege defects in the form of the indictment”;

NOTING that on 15 January 2004, the Accused filed a preliminary motion alleging defects in the form of the initial indictment issued on 15 January 2003 (Submission number 29),³ and that on 3 June 2004, Trial Chamber II instructed the Prosecution to clarify ambiguities pertaining to the crime site of Vojvodina and the meaning of the term “committed”;⁴

NOTING that, on 1 November 2004, the Prosecution proposed to implement these changes in a modified amended indictment but also to add a number of crime sites and a category of victims,⁵ and that on 2 June 2005, Trial Chamber II granted the changes proposed by the Prosecution and

¹ In light of the importance of the Requested Relief, the Trial Chamber shall accept the Motion in its entirety, despite it falling outside the 3,000 word limit prescribed by the Practice Direction on the Length of Briefs and Motions (IT/184.2), 16 September 2005 (“Practice Direction”) presently applicable to the Accused. *See* Decision Amending the Criteria for the Filing of Submissions from the Accused, 22 May 2007 (original in French issued on 17 May 2007).

² The Trial Chamber shall consider the Response, despite it having been filed outside office hours on the last day of the time limit prescribed in Rule 126*bis* of the Rules for responses.

³ “Objection to the Indictment” (Submission number 29), submitted on 24 December 2003 and filed on 15 January 2004.

⁴ Decision on Motion by Vojislav Šešelj Challenging Jurisdiction and Form of Indictment, signed on 26 May 2004 and filed on 3 June 2004, p. 21.

⁵ Prosecution’s Motion for Leave to Amend the Indictment with confidential and *ex parte* supporting material, submitted on 22 October 2004 and filed on 1 November 2004.

reminded the Accused that “within thirty days, he is entitled to file preliminary motions pursuant to Rule 72 of the Rules with respect to the new charges”;⁶

NOTING the Accused’s 50-page motion challenging the form of the amended indictment filed on 8 September 2005 (Submission 102) was rejected on 26 September 2005 by the then Pre-Trial Judge on the grounds that it was over the word limit prescribed by the Practice Direction, but that the Accused was given the possibility to file a new motion within the operative word limit before 7 October 2005 (“26 September 2005 Decision”);⁷

NOTING that on 27 September 2005, the Accused filed a motion pertaining to the length of his preliminary motion (Submission 110) and that on 10 October 2005, he requested certification to appeal the 26 September 2005 Decision and asked for an extension of time limits in which to file his preliminary motion until reception of translation into his native language of a number of judgements issued by the International Criminal Tribunal for Rwanda (Submission 111);⁸

NOTING that Trial Chamber II denied Submission 111 on 10 November 2005,⁹ and that on 17 November 2005, the Accused filed a subsequent motion for certification of appeal and renewed his request for additional time in which to file his preliminary motion (Submission 119);¹⁰

NOTING that on 10 November 2006, Trial Chamber I denied the request for certification and the additional time sought by the Accused to file his preliminary motion, a year after Submission 119 was filed before Trial Chamber II;

⁶ Decision on Prosecution’s Motion for Leave to Amend the Indictment, signed on 27 May 2005 and filed on 2 June 2005 (“2 June 2005 Decision”), p. 8. Trial Chamber II granted the following changes proposed by the Prosecution: “14. Further changes proposed by the Prosecution consist of: (i) The addition of a reference to ‘children’ as victims of extermination or murder in paragraph 17 of the Current Indictment, (ii) [...] the insertion of a reference to the alleged crimes of murder/extermination taking place in the Drinjača Dom Kulture in Zvornik; all in paragraph 22 of the Current Indictment, (iii) The designation of the time-period in which crimes were allegedly committed in parts of Vojvodina, Serbia, including the village of Hrtkovci to be “between May and August 1992”, instead of “May 1992” as stated in paragraph 27 of the Current Indictment, (iv) The addition of a reference to the destruction of institutions dedicated to religion and education in Zvornik in paragraph 31 of the Current Indictment” (footnotes omitted). The Trial Chamber considered “that some of the proposed amendments would result in the inclusion of new charges forming a new basis for conviction not previously included in the Current Indictment. 2 June 2005 Decision, para. 17.

⁷ Preliminary Motion by Dr. Vojislav Šešelj Pursuant to Rule 72 of the Rules of Procedure and Evidence Challenging the Modified Amended Indictment, submitted on 29 August 2005 and filed on 8 September 2005 (Submission 102; *see also* Submission 101 by the Accused submitted on 29 August 2005 and filed on 8 September 2005; Decision on Preliminary Motions Pursuant to Rule 72 (Submissions number 101 and 102), signed on 23 September 2005 and filed on 26 September 2005.

⁸ Submission 110 by the Accused of 19 September 2005, filed on 27 September 2005; Submission 111 by the Accused of 3 October 2005, filed on 10 October 2005.

⁹ Decision on Submissions number 110 and 111, signed on 9 November 2005 and filed on 10 November 2005.

¹⁰ Submission 119 by the Accused of 14 November 2005, filed on 17 November 2005.

NOTING that pursuant to the Appeals Chamber's decision overturning the decision rendered by Trial Chamber I to impose standby counsel on the Accused, Trial Chamber I found it "appropriate to review the status of the decisions served in translation on the Accused between 10 November 2006 and 8 December 2006";¹¹

NOTING the "Decision on the Application of Rule 73bis" issued by Trial Chamber I on 8 November 2006, served on the Accused in BCS on 27 November 2006, which ordered that

- (a) Counts 2, 3, 5, 6 and 7 are hereby removed from the Indictment;
- (b) The Prosecution shall not present evidence in respect of crimes allegedly committed in the crimes sites of Western Slavonia, Brčko, Bijeljina, Bosanski Šamac, and the crime site of Boračko Jezero/Mt. Borašnica as currently described in paragraph 27 of the Indictment and specified in paragraph 20 of this Decision;
- (c) The Prosecution may present non-crime base evidence in respect of the crime sites of Western Slavonia, Brčko, Bijeljina, Bosanski Šamac, and the crime site of Boračko Jezero/Mt. Borašnica as currently described in paragraph 27 of the Indictment and specified in paragraph 20 of this Decision;
- (d) The Prosecution shall indicate the changes made to the Indictment in accordance with this Decision by the substitution of the relevant parts of the Indictment with "[Omitted pursuant to Rule 73bis(D) of the Rules and the Decision of the Trial Chamber dated 8 November 2006]"

NOTING the Indictment was served on the Accused in BCS on 19 April 2007;

CONSIDERING the additions granted by Trial Chamber II in the 2 June 2005 Decision still constitute part of the Indictment;

NOTING pursuant to Rule 72(A) of the Rules, that preliminary motions alleging defects in the form of the indictment shall be filed no later than 30 days after disclosure by the Prosecution to the accused of "all material and statements referred to in Rule 66(A)(i) of the Rules";

CONSIDERING in the present case that, notwithstanding Trial Chamber II ruling on 21 December 2004 that "in the event that the Prosecution is given leave to amend the Indictment, the Prosecution will provide the supporting material to the Accused",¹² the Accused claims to have received the supporting material to the modified amended indictment as late as February 2006, which was therefore not in his possession when he filed Submission 102;¹³

¹¹ Decision on the Status of Decisions Issued and Pending Motions, signed on 18 December 2006 and filed on 5 January 2007, para. 8; *see also* Decision on Appeal Against the Trial Chamber's Decision (No. 2) on Assignment of Counsel, 8 December 2006.

¹² Decision on the Prosecution's Motion for Reconsideration of the Trial Chamber's Order to Provide the Accused with the Supporting Material, signed on 16 December 2004 and filed on 21 December 2004, para. 7.

¹³ Status Conference of 19 May 2006, T. 515.

CONSIDERING further the confidential decision issued in this case on 30 May 2007 concerning disclosure, in which the Pre-Trial Judge ordered that 15 statements be immediately disclosed to the Accused pursuant to Rule 66(A)(i) of the Rules (“30 May Disclosure Decision”);

CONSIDERING therefore that it appears that the Accused has presently still not received part of the Rule 66(A)(i) material required to be disclosed before the 30-day time limit starts running pursuant to Rule 72(A) of the Rules;

CONSIDERING, having regard to the proceedings described above, that challenges to the form of the modified amended indictment pursuant to Rule 72(A)(ii) by the Accused have not been considered;

CONSIDERING therefore that at this stage of the proceedings, it is in the interests of justice and within the duty of the Trial Chamber to ensure adequate preparation for a fair and expeditious trial that the Accused be allowed to file his challenges to the Indictment within 30 days;

PURSUANT TO Rules 50(C), 54 and 72 of the Rules,

HEREBY GRANTS the Motion and **ORDERS** that the Accused file any preliminary motion to the form of the Indictment no later than 30 days from either i) the date of service to the Accused of the present decision in BCS, or ii) the date of service to the Accused of the 15 Rule 66(A)(i) statements pursuant to the 30 May Disclosure Decision, whichever occurs last;

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



Patrick Robinson
Presiding

Dated this thirty first day of May 2007
At The Hague
The Netherlands

[Seal of the Tribunal]