



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: 5 November 2007

Original: ENGLISH
French

BEFORE TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 5 November 2007

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**SECOND DECISION CONCERNING PROSECUTION OBLIGATIONS
UNDER RULE 68 (i) OF THE RULES OF PROCEDURE AND EVIDENCE**

The Office of the Prosecutor:

Ms Christine Dahl

The Accused:

Mr 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 oral application made by Vojislav Šešelj (“Accused”) during the last status conference held on 23 October 2007, requesting that sanctions be imposed against the Office of the Prosecutor (“Prosecution”) for failing to discharge its disclosure obligations under Rule 68 (i) of the Rules of Procedure and Evidence (“Rules”);¹

NOTING Rule 68 (i) of the Rules according to which, *inter alia*

[s]ubject to the provisions of Rule 70

(i) the Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence;

(ii) without prejudice to paragraph (i), the Prosecutor shall make available to the defence, in electronic form, collections of relevant material held by the Prosecutor, together with appropriate computer software with which the defence can search such collections electronically;

CONSIDERING that in a decision of 7 June 2007 (“Decision of 7 June”), the pre-trial Judge ordered “the Prosecution to disclose ‘as soon as practicable’, in hard-copy and in a language that the Accused understands, the Rule 68 (i) documents”;²

CONSIDERING that since the underlying problems regarding this form of disclosure were highlighted during the status conference of 4 July 2007, the pre-trial Judge endeavoured to find a practical and effective solution and thus ordered

(i) the Prosecution to continue to use all the necessary means so that it can continue to meet its obligations pursuant to Rule 68 (i) and further to the Decision of 7 June 2007; and

(ii) the Accused to provide the Prosecution with the keywords he believes may be necessary to enable the Prosecution to find the Rule 68 (i) exculpatory material more effectively;³

¹ Status conference of 23 October 2007, Transcript in French (“T(F)”) p. 1651.

² Decision on Motion Number 289 Regarding Form of Disclosure, 7 June 2007, para. 37.

CONSIDERING that during the status conference of 23 October 2007, it became apparent that the issue of the 207,000 pages of documents disclosed electronically by the Prosecution on 30 September 2007 under Rule 68 of the Rules was not settled since the Accused renewed his request for disclosure of all of these documents in hard-copy;⁴

CONSIDERING that it is incumbent upon the Prosecution and the Prosecution alone to determine on a case-by-case basis which documents are covered by Rule 68 (i) of the Rules, in view of the right of the Accused to a fair trial;⁵

CONSIDERING therefore that the only obligation which rests upon the Chamber is to call upon the Prosecution to fulfil its obligations, to order the disclosure of documents that may be exculpatory for the Accused when it knows the Prosecution is aware of them, and to sanction potential breaches when they have been identified by the Accused;

CONSIDERING that during the last status conference the Prosecution stated that it had identified “approximately 3,000 documents” by using the keywords presented by the Accused during the status conference of 4 July 2007;

CONSIDERING that these keywords were identified by the Accused when he submitted that the 207,000 pages of documents were potentially exculpatory;

CONSIDERING that by conducting research using the keywords provided by the Accused, the Prosecution is aware of approximately 3,000 documents which may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence;

³ Order regarding Disclosure of Material Pursuant to Rule 68 (i) of the Rules of Procedure and Evidence, 9 July 2007, p. 3.

⁴ Status conference of 23 October 2007, T(F) pp. 1645-1647.

⁵ *The Prosecutor v. Naser Orić*, Case No. IT-03-68-T, Decision on Ongoing Complaints About Prosecutorial Non-Compliance with Rule 68 of the Rules, 13 December 2005, para. 20, referring to *The Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Decision on “Motion for Relief from Rule 68 Violations by the Prosecutor and for Sanctions to Be Imposed Pursuant to Rule 68 bis and Motion for Adjournment While Matters Affecting Justice and a Fair Trial Can Be Resolved”, 30 October 2002, paras. 22-25, 30; *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Appeal Judgement, 19 April 2004, para. 180.

CONSIDERING that pursuant to the Decision of 7 June, these documents must be provided to the Accused in hard-copy and in a language he understands as soon as practicable;

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 68 (i) of the Rules and the Decision of 7 June,

ORDERS the Prosecution to disclose, as soon as practicable, in hard-copy and in a language the Accused understands, the approximately 3,000 documents that the Prosecution has identified by using the keywords provided by the Accused.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this fifth day of November 2007

At The Hague

The Netherlands

[Seal of the Tribunal]