



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: 9 January 2008
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: 9 January 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION REGARDING THIRD AMENDED INDICTMENT

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 notice of compliance by the Office of the Prosecutor (“Prosecution”) with the “Decision on Preliminary Motion Filed by the Accused”, filed on 7 December 2007, by means of which the Prosecution presents its third amended indictment (“Notice”);¹

NOTING the “Decision on Preliminary Motion Filed by the Accused”, rendered by the Chamber on 27 November 2007 (“Decision of 27 November”);

CONSIDERING that the Decision of 27 November ordered the Prosecution to present by no later than 7 December 2007 an amended version of the Second Amended Indictment² by making the following changes:

82. [...]

- (i) To specify in paragraphs 5, 20 and 22 the dates and scope of the speeches in Mali Zvornik and Vukovar for which the Accused is held responsible and to publish in their entirety, in the annex to the Indictment, the three speeches for which the Accused is held responsible in paragraph 5 of the Indictment;
- (ii) To specify in paragraphs 5, 20, 22 and 33, to the extent possible, the identity of the alleged victims of the crimes the Accused allegedly physically committed through his speeches in Vukovar, Mali Zvornik and Hrtkovci;
- (iii) To add the term “committing” to the second sentence of paragraph 11, as follows: “On this basis, he bears individual criminal responsibility for **committing** the crimes under Article 7 (1) of the Statute of the Tribunal [...]” (**emphasis added by the Chamber**);
- (iv) To add the term “physically committed” in paragraph 15, to the list of the forms of responsibility already set out in accordance with Article 7 (1) of the Statute;
- (v) To amend paragraph 17(k) in order to specify that the Accused is held responsible for “public and direct denigration” as persecution (Count 1) through his speech in Mali Zvornik, Serbia;

¹ Prosecution’s Notice of Compliance with Decision of 27 November 2007, 7 December 2007.

(vi) To amend paragraphs 10(d), 17(g) and 17(i) in order to reflect the Prosecution's position which will be either (a) to hold the Accused responsible for the crimes committed in Vojvodina, only in Hrtkovci, in which case paragraphs 10(d), 17(g) and 17(i) will have to mention Hrtkovci only, or, as the case may be (b) to hold the Accused responsible for the crimes committed in other areas of Vojvodina besides Hrtkovci, in which case it is necessary for the Prosecution to specify which places these are.

83. The Chamber orders the Prosecution to present the revised list of victims jointly with the Second Amended Indictment pursuant to this decision.³

CONSIDERING that after a careful review of the Third Amended Indictment, the Chamber finds that the Prosecution has complied with the disposition of the Decision of 27 November, except in respect of the points set out below;

CONSIDERING in fact that in paragraph 5 of the Third Amended Indictment the Prosecution has failed to specify the dates and the scope of the speeches in Mali Zvornik and Vukovar for which Vojislav Šešelj ("Accused") is held responsible, as well as the identity of the alleged victims of the crimes that the Accused is alleged to have physically committed through his speeches in Vukovar, Mali Zvornik and Hrtkovci;

CONSIDERING nonetheless that an indictment must be read in its entirety and that the clarifications made in paragraphs 20 and 22 of the Third Amended Indictment regarding the speeches for which the Accused is held responsible and in paragraphs 20, 22 and 33 regarding the alleged victims of the crimes that the Accused is alleged to have physically committed through his speeches in Vukovar, Mali Zvornik and Hrtkovci are satisfactory;

CONSIDERING furthermore that the Prosecution which, pursuant to sub-paragraph (i) was required to "publish in their entirety, in the annex to the Indictment, the three speeches for which the Accused is held responsible in paragraph 5 of the Indictment", submits that it cannot publish the said speeches in the annex because it does not

² Second Amended Indictment, 28 September 2007.

³ Decision of 27 November, paras. 82, 83.

possess an audio or video recording of them and that the evidence concerning them will be tendered into the record through Prosecution witnesses;⁴

CONSIDERING that the Chamber, at this stage of the proceedings, cannot rule on how the Prosecution will seek to demonstrate beyond a reasonable doubt the responsibility of the Accused for the crimes under the Statute;

CONSIDERING nonetheless that the Chamber will have the opportunity, both during the procedure set out in Rule 98 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) as well as in the final deliberations, preceding the pronouncement of the judgement, to rule on the existence of defects in the Third Amended Indictment and their potential consequences on the rights of the Accused;⁵

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 18 (4), 21 (2), 21 (4) (a), and 21 (4) (b) of the Statute of the Tribunal and Rule 47 (C) of the Rules,

HEREBY ORDERS that the Third Amended Indictment is authoritative.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this ninth day of January 2008

At The Hague

The Netherlands

[Seal of the Tribunal]

⁴ Notice, para. 3.

⁵ *The Prosecutor v. Laurent Semanza*, Case No. ICTR-97-20-T, Judgement, 15 May 2003, paras. 41-62; *The Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara and Santighe Borbor Kanu*, Judgement, 20 June 2007, para. 24.