



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: 23 January 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 23 January 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON ACCUSED'S MOTION FOR CERTIFICATION TO APPEAL
THE ORAL DECISION OF 9 JANUARY 2008**

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”) on 9 January 2008 (“Application”)¹ in which the Accused requests certification to appeal the oral decision rendered the same day (“Decision of 9 January 2008”);²

NOTING the Decision of 9 January 2008 denying the Accused’s oral application made on 8 January 2008 to order the Prosecution not to call witnesses against him with regard to the municipalities no longer referred to in the Third Amended Indictment (“Indictment”);³

NOTING the Decision on the Application of Rule 73 *bis* rendered on 8 November 2006 (“Decision of 8 November 2006”) wherein Trial Chamber I (“Chamber I”) granted the Office of the Prosecutor (“Prosecution”) leave to present non-crime-base evidence in respect of the crime sites withdrawn from the Indictment, in particular Western Slavonia, Brčko, Bijeljina Bosanski Šamac;⁴

NOTING the Decision on Submission Number 311 requesting clarification by Chamber III of the Prosecution’s Pre-Trial Brief, dated 20 September 2007 (“Decision of 20 September 2007”), wherein the Chamber clarified that

¹ Hearing of 9 January 2008, Court Transcript in French (“T(F)”) 2269:

THE ACCUSED: [interpretation] Mr. President, I avail myself of my right to submit immediately request certification, and the time should run from the moment this certification is given me. I have to say I still don't have a full list of Prosecution witnesses because I cannot haul all those things with me all the time, but if you look at that list and the statement submitted with the list you will see that there are at least Prosecution witnesses who would testify -- who would produce strictly crime base evidence. Those are witnesses, victims who testify to what happened to them and, by the way, they say we heard from people that Seselj's men were there and accuse me of having something to do with it. There is no evidence that I had anything to do with it. And now I am in a position where I have to prepare myself for defence against such people as well.

² Oral Decision regarding the Accused’s application of 8 January 2008 to prohibit the appearance of witnesses summoned to testify about towns removed from the Indictment according to the decision under Rule 73 *bis*, 9 January 2008 (“Decision of 9 January 2008”)

³ Third Amended Indictment, 7 December 2007; hearing of 8 January 2008, T(F) 2245.

THE ACCUSED: [interpretation] I don't know, Mr. President, how long this break will be, but I insist and demand, and I wish this to be treated as my formal oral motion, while this issue is being discussed the Trial Chamber should also decide what will happen with the witnesses that the Prosecution wants to call who will testify about the crime base in places no longer in the indictment.

⁴ Decision on the Application of Rule 73 *bis*, 8 November 2006, p. 10.

evidence concerning crimes which are not mentioned in the Indictment remain admissible in order to corroborate other evidence which will allow the Prosecution to establish a consistent pattern of conduct under Rule 93 (A) of the Rules, provided that that Accused has been clearly informed of its intentions;⁵

CONSIDERING that, according to the Accused, the Decision of 9 January 2008 jeopardizes his rights under the Statute and Rules of Procedure and Evidence of the Tribunal (“Rules”);⁶

CONSIDERING that the Prosecution did not respond to the Application,

CONSIDERING that in light of Rule 73 (B) of the Rules, decisions on all motions are without interlocutory appeal save with certification by the Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which an immediate resolution by the Appeals Chamber may materially advance the proceedings;

CONSIDERING as a result that certification to appeal is a matter within the discretionary power of the Chamber which must, in any case, first verify that the two cumulative conditions set out in Rule 73 (B) of the Rules have been met in this case;⁷

CONSIDERING that in its Decision of 9 January 2008, the Chamber noted that the Decision of 8 November 2006 was clear and unequivocal in that it permitted the Prosecution to present evidence on Western Slavonia, Brčko, Bijeljina and Bosanski Šamac in respect of pattern evidence and evidence going to proof of a consistent pattern of conduct;

CONSIDERING that the Chamber must strike a balance between the rights of the self-representing Accused, in particular his right to be informed of the nature and cause of the charge against him and to cross-examine the witnesses called against him;

⁵ Decision on Submission Number 311 Requesting that Chamber III Clarify the Prosecution’s Pre-Trial Brief, 20 September 2007, p. 3.

⁶ Hearing of 9 January 2008, T(F) 2262, 2263, 2266, 2267.

⁷ *The Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T, Decision on Defence Motion for Certification, 17 June 2004, para. 2; *The Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić*, Case No. IT-05-87-T, Decision on Prosecution’s Request for Certification of Interlocutory Appeal of Second Decision on Addition of Wesley Clark to Rule 65 *ter* List, 14 March 2007, para. 3.

CONSIDERING that the issue of the appearance of witnesses related to the municipalities previously excluded from the Indictment and testifying about the “consistent pattern of conduct” is one that might significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial;

CONSIDERING furthermore that it is necessary for the issue of witnesses related to the municipalities excluded from the Indictment in accordance with the Decision of 8 November 2006 to be settled immediately without waiting for the close of the prosecution case;

FOR THESE REASONS

IN ACCORDANCE with Articles 20 (1) and 21 of the Statute and Rule 73 (B) of the Rules,

GRANTS the Motion.

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

_____/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]