



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

HL
Case No.: IT-03-67-T
Date: 12 February 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: 12 February 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON AMENDING THE LIST OF EXHIBITS RELATIVE TO THE
REPORT OF REYNAUD THEUNENS**

The Office of the Prosecutor

Mr Daryl Mundis

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

1. 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”) is seized of a confidential motion filed by the Office of the Prosecutor (“Prosecution”) on 24 December 2007 to amend the Exhibits List pursuant to Rule 65*ter* of the Rules of Procedure and Evidence (“Motion” and “Rules”, respectively).¹

2. On 4 February 2008, the Prosecution filed a *corrigendum* to the Motion (“*Corrigendum*”)² in which it corrected the errors pertaining to dates and citations. Furthermore, of the 59 documents that it had requested for admission to the list of exhibits pursuant to Rule 65*ter* of the Rules (“65*ter* List”), it withdrew four that were already on the 65*ter* List.³ For the sake of clarity, the Prosecution attached to the *Corrigendum* a version incorporating the corrections to the Motion (“Amended Motion”).⁴

II. ARGUMENTS OF THE PARTIES

A. The Amended Motion

3. The Prosecution requests the admission of 55 documents to its 65*ter* List that Reynaud Theunens, a witness that the Prosecutions intends to call as an expert,⁵ refers to in his report on the structure of the Serbian forces involved in the conflict in Croatia and Bosnia and Herzegovina, concentrating on the volunteers of the Serbian Radical Party and the Serbian Chetnik Movement, and their role during the conflict (“55 Documents” and “Report”, respectively).⁶

4. The Prosecution submits that: (1) the 55 Documents support the Report and the testimony of Reynaud Theunens and are necessary in order to understand them, that

¹ Prosecution’s Motion for Leave to Add Exhibits to its 65*ter* List, confidential, 24 December 2007.

² Corrigendum to Prosecution’s Motion for Leave to Add Exhibits to its 65*ter* List, confidential, 4 February 2008.

³ *Corrigendum*, para. 4

⁴ *Corrigendum*, para. 8.

⁵ See Decision on Expert Status of Reynaud Theunens, 12 February 2008.

⁶ Amended Motion, para. 1.

they are relevant to paragraphs 5 to 11 of the Indictment and all the counts;⁷ (2) Vojislav Šešelj (“Accused”) will have had sufficient time to examine the 55 documents and prepare his defence with regard to them⁸ and will not suffer any prejudice since the Report was disclosed to him on 31 March 2006, the exhibits on 14 and 30 November 2007 and on 7, 23 and 28 January 2008, and finally, the testimony of Reynaud Theunens is scheduled for early February;⁹ (3) the Amended Motion has good cause since it results from the Prosecution’s inadvertent omission and the interest of the presentation of evidence with probative value prevails over an omission that causes no prejudice to the Accused.¹⁰

B. The Response

5. During the hearing of 5 February 2008, the Accused stated that he had not been able to examine these documents since he had only received them the day before.¹¹ The Accused contested the Prosecution’s manner of operation since, after five years, it is still presenting numerous supplementary documents. The Accused specified nevertheless that *a priori* these documents would not significantly disturb his cross-examination.¹²

6. During the hearing of 6 February 2008, following the President of the Chamber’s question as to whether or not he would respond to the Motion, the Accused stated that he objected to it in principle owing to the Prosecution’s delay, as it had waited until the last moment to present these documents.¹³ The Accused renounced any written response, however, in order not to call into question the scheduled date for Reynaud Theunens’s testimony.¹⁴

⁷ Amended Motion, paras. 3-4.

⁸ Amended Motion, para. 8.

⁹ Amended Motion, para. 7.

¹⁰ Amended Motion, paras. 9-10.

¹¹ Hearing of 5 February 2008, Transcript in French (“T(F)”) 3093. The Chamber notes that this is about reception of the Motion in BCS with the attached documents requested for admission to the 65^{ter} List, *see* Procès-verbal of reception dated 6 February 2008, signed by the Accused.

¹² *Ibid.*

III. APPLICABLE LAW

7. Rule 65ter (E) (iii) of the Rules provides, *inter alia*, that the pre-trial Judge shall order the Prosecutor to file within a time-limit set by this Judge and not less than six weeks before the Pre-Trial Conference required by Rule 73 bis “the list of exhibits the Prosecutor intends to offer”, serving on the Defence copies of the exhibits listed. Nevertheless, the Chamber is free to authorise the amendment of the 65ter List in the exercise of its inherent discretion in managing the trial proceedings.¹⁵

8. In order to favourably receive a request to add exhibits to the 65ter List, the Chamber must ensure that the rights of the Accused are respected by making sure that the proposed exhibits are disclosed sufficiently in advance and that the addition does not hinder the Accused in the preparation of his defence.¹⁶ The Chamber also takes into account other factors such as relevance or any other ground that the Chamber deems valuable, such as the complexity of the case or the date that the Prosecution received the said documents.¹⁷

IV. DISCUSSION

9. The Prosecution recognizes that its error results from inadvertently omitting to put the 55 Documents on its 65ter List.¹⁸

10. The Chamber considers, in light of the explanations provided by the Prosecution in annex to the Amended Motion, that each of the 55 Documents is *a priori* relevant to Reynaud Theunens’s report, which the Prosecution requested for admission as an

¹³ Hearing of 6 February, T(F) 3194.

¹⁴ *Ibid.*

¹⁵ *The Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević*, Case No. IT-05-88-AR73.1, Decision on Appeals Against Decision Admitting Material Related to Borovčanin’s Questioning, 14 December 2007, para 37.

¹⁶ *The Prosecutor v. Milan Martić*, Case No. IT-95-11-PT, Decision on Prosecution’s Motion to Amend its Rule 65ter List, 15 December 2005, p. 3 and *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, Case No. IT-04-74-T, Decision on List of Exhibits, 7 September 2007, p. 4.

¹⁷ *The Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević*, Case No. IT-05-88-T, Decision on Prosecution’s Motion for Leave to Amend Rule 65ter Witness List and Rule 65ter Exhibit List, confidential, 6 December 2006, p. 7.

¹⁸ Amended Motion, para. 9.

expert report pursuant to Rule 94*bis* of the Rules.¹⁹ Furthermore, the Chamber notes that the authorisation to amend the 65*ter* List in no way prejudices the examination of the relevance and probative value of the 55 Documents that will be subsequently conducted by the Chamber pursuant to Rule 89 (C) of the Rules when the Prosecution requests their admission into evidence.

11. Although the date given by the Prosecution is incorrect, the Chamber recalls that the Accused received the Report several months ago.²⁰ The Accused was thus notified of the existence of these 55 Documents in footnotes to the Report.²¹

12. The Chamber notes that the Prosecution states that it disclosed copies of the 55 Documents to the Accused on 14 and 30 November 2007 and on 7, 23 and 28 January 2008.²²

13. Since the 55 Documents were disclosed to the Accused in a language he understands around two weeks ago, he will not suffer any prejudice that would prevent the addition of these documents to the 65*ter* List at this stage of the proceedings. In addition, the Accused stated himself that the addition of these documents to the 65*ter* List would not significantly disturb his cross-examination and that he did not want the date of Witness Reynaud Theunens's appearance to be changed.

¹⁹ Amended Motion, para. 1.

²⁰ The Accused received a redacted version of the Report on 17 or 18 May 2007.

²¹ The Chamber notes that 54 of the documents correspond to footnotes in parts I and II of the Report while one document corresponds to a footnote in "part III" of the Report which is the *Addendum* of the Report of which the Accused acknowledge receipt in a language he understands on 12 September 2007.

²² Amended Motion, para. 7.

V. DISPOSITION

14. **PURSUANT TO** Rules 54 and 65*ter* 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 twelfth day of February 2008
At The Hague
The Netherlands

[Seal of the Tribunal]