



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: 20 March 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: 20 March 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON THE ADMISSION OF EXHIBITS PRESENTED DURING
THE TESTIMONY OF WITNESS VS-004**

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 the request to admit into evidence exhibits presented by the Office of the Prosecutor ("Prosecution") on 7 and 12 February 2008 during the testimony of Witness VS-004.¹

2. During these hearings, Vojislav Šešelj ("Accused") raised objections to the admission of exhibits number 65 *ter* 261,² 65 *ter* 511,³ 65 *ter* 1026⁴ and 65 *ter* 2078,⁵ provisionally marked for identification ("MFI") as MFI P171,⁶ MFI P173,⁷ MFI P187⁸ and MFI P188,⁹ respectively.

3. Moreover, on 27 February 2008, the Accused presented two submissions to review the decision to admit exhibits P177¹⁰ and P178¹¹ ("Submissions by the Accused"). The Prosecution did not file a response within the 14 days envisaged by Rule 126 *bis* of the Rules of Procedure and Evidence ("Rules").

4. The Chamber must also rule on the admission into evidence of Exhibit number 65 *ter* 411,¹² presented through the testimony of Witness VS-004. This exhibit was marked for identification with the provisional number MFI P39 following the decision

¹ Hearing of 7 February 2008, court transcript (French) ("T(F)", pp. 3343, 3351; hearing of 12 February 2008, T(F) 3447, 3451.

² Letter from the Serbian National Council of Slavonia, Baranja and Western Srem, 30 May 1991.

³ Decision on the Appointment of President, Vice-President and Ministers of the Government of the Serbian District of Slavonia, Baranja and Western Srem of 25 September 1991.

⁴ Report by the Banja Luka Military Prosecutor, 23 March 1992.

⁵ Report by the Ministry of the Interior of the Republic of Croatia, war crimes section, 19 August 1991.

⁶ Hearing of 7 February 2008, T(F) 3343.

⁷ Hearing of 7 February 2008, T(F) 3351.

⁸ Hearing of 12 February 2008, T(F) 3447.

⁹ Hearing of 12 February 2008, T(F) 3451.

¹⁰ "Submission 376 - Professor Vojislav Šešelj's Motion for the Trial Chamber to Review its Order of 7 February 2008 Admitting Prosecution Video Materials into Evidence (Part One)", presented on 19 February 2008 and filed on 27 February 2008 ("Submission 376").

¹¹ "Submission 377 - Professor Vojislav Šešelj's Motion for the Trial Chamber to Review its Order of 7 February 2008 Admitting Prosecution Video Materials as Evidence in the Case File (Part Two)", presented on 19 February 2008 and filed on 27 February 2008 ("Submission 377").

¹² *Der Spiegel* interview with the Accused, reprinted by TANJUG Agency on 8 August 1991.

of the Chamber to admit into evidence the transcript testimony of the Accused in case no. IT-02-54-T.¹³

II. DISCUSSION

5. The Chamber has examined each exhibit on the basis of the admissibility criteria defined in the Order of 15 November 2007 and, notably, the fact that "Pursuant to Rule 89(C) of the Rules, the Chamber cannot admit evidence which it considers to be without relevance and probative value. The party requesting its admission must demonstrate its relevance and probative value."¹⁴

A. Accused's Interview with *Der Spiegel* (MFI P39)

6. By applying the Decision of 30 October 2007 on the Prosecution Motion to admit into evidence the transcript of Vojislav Šešelj's testimony in the *Milošević* case, Exhibit number 65 *ter* 411 was marked for identification with the provisional number MFI P39.¹⁵

7. Although the Accused does not seem to object to the admission into evidence of Exhibit MFI P39,¹⁶ he raised an objection to the nature of the said document as defined by the Prosecution, because he claims that this document is not a public document, but a Tanjug¹⁷ internal document which was only distributed to certain privileged readers.¹⁸

8. The Chamber notes that Exhibit MFI P39, which was the subject of discussion at the hearing, presents sufficient indicia of authenticity, relevance and probative value, and that the Accused's objection concerns the weight to be attributed at a later date to the document in the light of the testimony of VS-004.

¹³ See para. 6 *infra*.

¹⁴ "Order Setting out the Guidelines for the Presentation of Evidence and the Conduct of the Parties during the Trial", 15 November 2007, para. 7.

¹⁵ "Decision on Prosecution's Motion to Admit into Evidence Transcripts of Vojislav Šešelj's Testimony Given in the *Milošević* Case", 30 October 2007, p. 3.

¹⁶ Hearing of 13 February 2008, T(F) 3626.

¹⁷ A Yugoslav press agency, *see* hearing of 13 February 2008, T(F) 3626.

¹⁸ Hearing of 13 February 2008, T(F) 3626.

B. Letter from the Serbian National Council of Slavonia, Baranja and Western Srem (MFI P171)

9. The Accused objects to the admission into evidence of Exhibit MFI P171 because it mentions the autonomous region of Slavonia, Baranja and Western Srem, to which there was no reference in the testimony of VS-004.¹⁹

10. Witness VS-004 attested that Exhibit MFI P171 deals with the autonomous region of Slavonia, Baranja and Western Srem and stated that he was not able to provide detailed information about events that took place in this region, because he lived in Western Slavonia.²⁰

11. The Chamber considers, moreover, that at this stage of the proceedings, Exhibit MFI P171 presents sufficient indicia of authenticity, relevance and probative value to justify its admission. Indeed, the Prosecution may present evidence regarding crimes that were committed in Western Slavonia, on the basis of a consistent pattern of conduct,²¹ since the autonomous region of Slavonia, Baranja and Western Srem is also referred to in paragraph 6 of the Third Amended Indictment as part of a joint criminal enterprise.

C. Decision by the Serbian Assembly of Slavonia, Baranja and Western Srem (MFI P173)

12. The Prosecution maintains that Exhibit MFI P173 is relevant in order to establish the willingness of the local government of the Serbian district of Slavonia, Baranja and Western Srem to separate from Croatia, as well as the existence of a split at the heart of the Serbian Democratic Party ("SDS").²²

13. The Accused questions the relevance of Exhibit MFI P173, which he claims is only connected to the region of Slavonia, Baranja and Western Srem. Moreover, the Accused states that, contrary to what the Prosecution claims, the said document does

¹⁹ Hearing of 7 February 2008, T(F) 3342.

²⁰ Hearing of 7 February 2008, T(F) 3341-3343.

²¹ Decision on the Application of Rule 73 *bis*, 8 November 2006 (« Decision of 8 November 2006 »), para. 30.

²² Hearing of 7 February 2008, T(F) 3348-3350.

not show the existence of a split at the heart of the SDS,²³ since it originates from the Serbian Assembly of that region, an organ made up of representatives from several parties and not only the SDS. In addition, the Accused notes that Witness VS-004 has not provided any specific information on the content of Exhibit MFI P173.²⁴

14. Reiterating here the reservations it has already expressed at the hearing,²⁵ the Chamber considers that the Prosecution has not demonstrated the *prima facie* relevance of document MFI P173 in general, and even less so through Witness VS-004. It therefore follows that the Prosecution is free to present the document through another witness, in its present form or in its entirety.

D. Video (P177)

15. The Accused claims that this video clip is the result of the author of the documentary having manipulated footage taken from Radio Television Belgrade and Radio Television Croatia.²⁶ The Accused therefore asks that the Chamber review its decision to admit into evidence Exhibit MFI P177²⁷.

16. The Chamber notes that the video presented by the Prosecution comes from the documentary *The Death of Yugoslavia* produced by the BBC television channel that was brought to public attention for the first time in 1995. Moreover, Exhibit MFI P177 is relevant in that it shows the Accused making a statement to a journalist on the events in Borovo Selo. In this regard, the Accused has not challenged the re-broadcasting of his own words on these events. The Chamber, therefore, has no reason to revise its decision to admit into evidence Exhibit P177. Nevertheless, the arguments presented by the Accused will be weighed by the Chamber later in its assessment of the Exhibit's probative value.

²³ Hearing of 7 February 2008, T(F) 3350-3351.

²⁴ Hearing of 7 February 2008, T(F) 3348.

²⁵ Hearing of 7 February 2008, T(F) 3348-3350.

²⁶ Submission 376, p. 3.

²⁷ *Id.*, p. 4.

E. Video (P178)

17. Exhibit P178 cannot be admitted,²⁸ according to the Accused, since this part of the video is made up of several extracts edited together of the Accused making a speech and the reactions of the crowd during a rally, whose sequence is dubious.²⁹ This footage is allegedly a manipulation of the words of the Accused and the reactions of the public in order to make the Accused and his supporters appear aggressive and reactionary.³⁰

18. In addition, the Accused notes that neither the Prosecution nor the witness are able to provide information about the rally, notably regarding the date and place.³¹ Finally, the Accused considers that the witness is unable to provide information on this Exhibit, since he was not present at the rally and had never seen the Exhibit before the Prosecution showed it to him.³²

19. The Chamber notes that the lack of essential information regarding the recording of this video, such as the date and the place of the rally in the footage, and the uncertainty concerning the sequence of the recorded footage will certainly affect the final weight attributed to this Exhibit by the Chamber. Nevertheless, the Chamber has no reason at this stage to reverse its decision to admit Exhibit P178 into evidence.

F. Military Post 4022 Document (MFI P187)

20. The Accused claims that Exhibit MFI P187 is void of any relevance, since it does not refer to volunteers of the Serbian Radical Party ("SRS"), but to members of units of the Army of the Socialist Federal Republic of Yugoslavia ("JNA").³³

21. The Prosecution considers it important to tender into evidence certain documents, such as Exhibit MFI P187 which, even though they may not have direct links to the Accused, help the Chamber to gain an overall view of the events.³⁴

²⁸ Submission 377, p. 3.

²⁹ *Id.*, pp. 4, 5, 8.

³⁰ *Id.*, p. 8.

³¹ *Id.*, p. 3.

³² *Id.*, p. 5.

³³ Hearing of 12 February 2008, T(F) 3445, 3346.

³⁴ Hearing of 12 February 2008, T(F) 3447.

22. The Chamber notes that Witness VS-004 attested that the content of Exhibit MFI P187 corresponds to events as he remembers them and is consistent with what he has heard. The Chamber considers that the document, which was discussed at the hearing, presents sufficient indicia of authenticity, relevance and probative value, and that the objection by the Accused refers mainly to the weight that will be assigned later to the document in the light of the testimony of VS-004 on the matter.

G. Document from the Ministry of the Interior of the Republic of Croatia (MFI P188)

23. The Accused objects to the admission of Exhibit MFI P188, claiming that the English translation is incomplete, the "list of suspects" is missing and, in any case, this list does not show any link between the persons mentioned and the SRS or the Accused himself.³⁵

24. The Chamber considers that Exhibit MFI 188, whose English translation is adequate, seems to be, *prima facie*, relevant, since it refers to the consistent pattern of conduct which the Prosecution was authorised to show through crime sites dropped from the Indictment in the Decision of 8 November³⁶ in the present case.

III. DISPOSITION

25. For the foregoing reasons, pursuant to Rule 89 of the Rules, **PARTIALLY GRANTS** the Prosecution's requests, and **ADMITS** into evidence the following exhibits:

- i) MFI P39 which becomes Exhibit P39 ;
- ii) MFI P171 which becomes Exhibit P171 ;
- iii) MFI P187 which becomes Exhibit P187 ;
- iv) MFI P188 which becomes Exhibit P188 ;

26. The Chamber **REJECTS** the Prosecution's request to admit Exhibit MFI P173.

³⁵ Hearing of 12 February 2008, T(F) 3451-3452.

³⁶ Decision of 8 November 2006, p. 10.

27. The Chamber **REJECTS** the requests by the Accused regarding exhibits P177 and P178.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this twentieth day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]