



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: 22 October 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: 22 October 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON REQUESTS FOR DISCLOSURE FROM THE
PROSECUTION AND THE ACCUSED IN CASE IT-03-67-T WITH REGARD
TO CASE IT-03-67.R77.1**

The Office of the Prosecutor

Mr Daryl Mundis
Ms Christine Dahl

The Defence in Case IT-03-67-R77.1

Mr Ljubiša Petković

Counsel for Ljubiša Petković

Ms Branislava Isailović

The Accused in Case IT-03-67-T

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 a motion by the Office of the Prosecutor (“Prosecution”), filed confidentially on 9 September 2008, requesting the transcripts of all the hearings held in case IT-03-67-R77.1 (“Petković Matter”) as well as all the exhibits tendered therein into evidence, either public or under seal (“Prosecution Motion”);¹

SEIZED also of a motion by Vojislav Šešelj (“Accused”), filed on 19 September 2008, requesting the record of the hearing of 3 September 2008 and all subsequent hearings in the Petković Matter (“Accused’s Motion”);²

NOTING the Prosecution addendum filed on 16 September 2008 in which the Prosecution requests disclosure of the entire judgement rendered on 11 September 2008 by the Chamber in the Petković Matter (“Addendum to Prosecution Motion”);³

NOTING Rule 79 of the Rules of Procedure and Evidence (“Rules”) whereby, *inter alia*,

- (A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of: [...]
- (i) safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or
 - (ii) the protection of the interests of justice.

CONSIDERING that the Prosecution submits that there is a clear nexus between the Šešelj case and the Petković Matter in that the documents tendered into evidence in the Petković Matter could clarify questions regarding the credibility of Ljubiša

¹ *In the Matter of Ljubiša Petković*, Case No. IT-03-67-R77.1, Prosecution Motion Seeking Access to Trial Record, confidential, 9 September 2008 (“Prosecution Motion”). This motion was also filed the same day in the case of *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T.

² Motion of Professor Vojislav Šešelj for Trial Chamber III to Provide Him with a Recording of the Trial of Ljubiša Petković for Contempt of the Tribunal (linked with Case IT-03-67-P[sic]77.1, confidential, 19 September 2008.

³ Addendum to Prosecution Motion Seeking Access to Trial Record, confidential, 16 September 2008.

Petković, who is a potential witness in the Šešelj case, and could also be relevant in an examination of the evidence presented within the scope of the Šešelj case;⁴

CONSIDERING that the Accused alleges that in order to guarantee that the rights of the Defence are respected, the interests of justices preserved and that a fair trial is ensured, he must have access to the record of the hearings in the Petković Matter, since Ljubiša Petković is a “witness for the Defence”;⁵

CONSIDERING that the Appeals Chamber of the Tribunal stated that in order to grant a request for access to confidential exhibits, the requesting party must show that (i) the exhibits are likely to be of material assistance in supporting its case by establishing a legitimate forensic purpose,⁶ (ii) the relevance of the exhibits requested by a party may be determined by showing the existence of a nexus between the case of the said party and the cases from which such material is sought,⁷ and (iii) the existence of geographical and temporal overlap between two cases is not sufficient to conclude systematically that there is a legitimate forensic purpose;⁸

CONSIDERING first, that the Petković Matter involves only one single charge of contempt against Ljubiša Petković for having refused to obey a subpoena issued by the Chamber in order for him to testify pursuant to Rule 98 of the Rules;⁹

CONSIDERING that during the hearings of the Petković Matter, the Chamber ordered closed session and placed certain exhibits under seal in order to protect Ljubiša Petković’s security and his and his family’s private life;

CONSIDERING that if there is a certain nexus between the Šešelj case and the Petković Matter by Ljubiša Petković’s simple quality as a witness called to appear by the Chamber in the Šešelj case, neither the Prosecution nor the Accused has shown

⁴ Prosecution Motion, para. 5.

⁵ Accused’s Motion, p. 3.

⁶ *The Prosecutor v. Tihomir Blaškić*, Decision on Appellants Dario Kordić and Mario Čerkez’s Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-Public Post Appeal Pleadings and Hearing Transcripts Filed in *The Prosecutor v. Blaškić*, 16 May 2002, IT-95-14-A, para. 14.

⁷ *Id.*, para. 15.

⁸ *Id.*, para. 16.

⁹ Order in Lieu of an Indictment for Contempt Against Ljubiša Petković, confidential, 13 May 2008; see *In the Matter of Ljubiša Petković*, Case No. IT-03-67-R77.1; Order to Lift Confidentiality, 28 May 2008.

that the disclosure of the requested documents followed a “legitimate forensic purpose”;

CONSIDERING in effect that the closed sessions and placement under seal ordered by the Chamber protect solely the security and private life of Ljubiša Petković and, consequently, the Chamber considers that the information contained therein is not likely to help the case of either the Prosecution or the Accused;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 79 of the Rules,

DENIES the Prosecution Motion, the Addendum to the Prosecution Motion and the Accused’s Motion.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-second day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]