



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: 11 December 2008

Original: ENGLISH  
French

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**IN TRIAL CHAMBER III**

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

**Registrar:** Mr Hans Holthuis

**Order of:** 11 December 2008

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

***PUBLIC DOCUMENT***

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**SECOND ORDER REGARDING DISCLOSURE OF VIDEOS BY THE  
PROSECUTION TO THE ACCUSED**

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**The Office of the Prosecutor:**

Mr Daryl Mundis  
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");

**NOTING** the application made by the Accused during the hearing of 20 March 2008 requesting disclosure of all the video recordings in the custody of the Office of the Prosecutor ("Prosecution");<sup>1</sup>

**NOTING** the oral application made during the hearing of 12 June 2008 by the Prosecution ("Application") which, after transferring some 6,600 hours of video recordings onto 11 hard disks ("Videos"), requested that the Chamber order as follows, before any disclosure to the Accused be made: that the Accused (i) return all of the Videos at the end of this case; (ii) not copy the Videos, and (iii) not disclose the Videos to anyone other than associates of the Defence team;<sup>2</sup>

**NOTING** the Order Regarding Disclosure of Videos by the Prosecution to the Accused, issued by the Chamber on 17 June 2008, which raises a certain number of questions for the Prosecution ("Order of 17 June 2008");

**NOTING** the confidential written submissions by the Prosecution, dated 23 June 2008, in which the Prosecution responds to the questions put to it by the Chamber in its Order of 17 June 2008 ("Response");<sup>3</sup>

**CONSIDERING** that the Prosecution, having raised the issue of the copyright of intellectual property ("copyright") connected to the Videos, submits that it does not know exactly which Videos are protected by copyright<sup>4</sup> and whether or not a written agreement exists between the Prosecution and those who supplied the Videos;<sup>5</sup>

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<sup>1</sup> Hearing of 20 March 2008, Transcript in French ("T(F)") 5151.

<sup>2</sup> Hearing of 12 June 2008, T(F) 8141-8142; *see also Id.*, T(F) 8148, where the Prosecution specifies subsequently that only the associates who have signed a confidentiality agreement with the Registry of the Tribunal should have access to these video recordings ("privileged associates").

<sup>3</sup> Prosecution Submission Concerning Disclosure of Video Material, filed confidentially on 23 June 2008 ("Response").

<sup>4</sup> Response, para. 9. The Prosecution adds that it would take weeks, indeed months, for it to respond to the Chamber precisely on this point.

<sup>5</sup> Response, para. 12. The Prosecution adds that it would take weeks, indeed months, for it to respond to the Chamber precisely on this point.

**CONSIDERING** that the Prosecution draws the attention of the Chamber to the fact that only a small portion of the Videos is relevant to the case in question and that, even if the Accused agreed during the hearing to return the Videos after use and not to make any commercial usage of them,<sup>6</sup> he doubtlessly intends to use the Videos for purposes other than for the preparation of his defence;<sup>7</sup>

**CONSIDERING** that the Prosecution consequently requests of the Chamber that (i) the Accused return all of the Videos at the end of this case; (ii) the Accused not copy the Videos, and (iii) the Accused not disclose the Videos to anyone other than associates of the Defence team;<sup>8</sup>

**CONSIDERING** that Rule 74 of the Rules entitled *Amicus Curiae* stipulates that a Chamber may, if it considers it desirable for the proper administration of justice, invite or grant leave to any person to make submissions on any issue specified by the Chamber;

**CONSIDERING** that the copyright question raised by the Prosecution is a delicate and complex matter which, in order to be properly understood, requires the opinion of a legal expert in intellectual property rights;

**CONSIDERING** indeed that it can reasonably be expected that the Accused will use part of the Videos for his defence;

**CONSIDERING**, however, that the trials before the Tribunal are broadcast publicly on the Tribunal's website and that the Chamber, when informed thereof, did not oppose the rebroadcasting of hearings in the present case by Serbian television;<sup>9</sup>

**CONSIDERING**, consequently, that business companies or private persons could conceivably copy images from the Videos and use them commercially;

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<sup>6</sup> Response, para. 13, referring to the hearing of 12 June 2008, T(F) 8149-8150;

<sup>7</sup> Response, para. 8.

<sup>8</sup> Response, para 14. The Chamber notes that the Prosecution has returned to the original wording of the oral request (cf. hearing of 12 June 2008, T(F) 8142), and asks simply that only the privileged associates of the Accused be given access to the Videos.

<sup>9</sup> Hearing of 27 September 2008, T(F) 1490.

**CONSIDERING**, as a result, that the Chamber wonders whether this usage could give rise to civil responsibilities for the Tribunal and whether, in order to safeguard the property rights of the Videos, it would be necessary, when the Videos are shown in court, for the Chamber to go into closed session;

**CONSIDERING** that it is thus essential, before the Prosecution discloses the Videos to the Accused, for the Chamber to be informed by an expert in intellectual property rights about the legal ramifications of broadcasting the Videos, in order to prevent any future problems from arising on this point.

### **FOR THESE REASONS**

**IN ACCORDANCE** with Rule 74 of the Rules,

**ORDERS** the Registry to appoint an *amicus curiae* specialised in intellectual property rights who will:

- (1) prepare a report on the legal ramifications of the Tribunal broadcasting the Videos and on their possible use for commercial purposes by business companies or private persons;
- (2) indicate, in particular, whether the public broadcasting of the Videos could give rise to civil responsibilities for the Tribunal and, if so, what potential solutions might be found to avoid these problems and ensure a public trial;
- (3) submit his or her report to the Chamber within thirty days of his or her appointment by the Registry.

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

/signed/

Jean-Claude Antonetti  
Presiding Judge

Done this eleventh day of December 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**