



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 April 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 23 April 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON THE REQUEST TO ADMIT DOCUMENTS TENDERED
THROUGH WITNESSES ANTHONY OBERSCHALL, MILORAD
VOJNOVIĆ AND VIŠNJA BILIĆ**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I. PROCEDURAL BACKGROUND

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 documents presented during the testimony of Witnesses Anthony Oberschall, Milorad Vojnović and Višnja Bilić.

2. In this decision, the Chamber shall rule on the admission into evidence of the documents which were assigned temporary reference numbers MFI P16, MFI P19, MFI P605 and MFI P630 during hearings in this case, as well as on the request to tender into evidence documents 65 *ter* 1065 and 1062.

II. APPLICABLE LAW

3. The Chamber has examined the documents whose admission was requested according to Rule 89 of the Rules of Procedure and Evidence ("Rules") and the procedure established in the Order of 15 November 2007, setting forth the guidelines intended to govern the presentation of evidence and the conduct of the parties during the trial.

4. The Chamber recalls, moreover, that, at this stage of the proceedings, it is only conducting a *prima facie* review of the relevance, reliability and probative value of the exhibits submitted and need not make a final assessment. Only at the conclusion of the trial will that be done, after all of the evidence, both Prosecution and Defence, has been tendered into the record.¹

III. DISCUSSION

A. Documents Tendered Through Witness Anthony Oberschall

1. Documents MFI P16 and 65 *ter* 1065 and 65 *ter* 1062

¹ *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, "Decision to Admit Documentary Evidence Presented by the Prosecution," confidential, 5 October 2007, p. 7.

5. At the hearing of 11 December 2007, during the testimony of Anthony Oberschall, the Prosecution requested the admission into evidence of document N° 65 *ter* 6011, which was a G video sequence from a Croatian television network, in which a speech of the Accused during a session of Parliament was commented upon by a journalist.²

6. At the hearing, the Accused contested the admission into evidence of this video excerpt for the reason that it did not directly relate the speech he had given but constituted an interpretation of his speech by a journalist.³

7. The Chamber decided to mark this document for identification purposes as “MFI P16”, pending its translation into English and further verification.⁴

8. In its decision dated 24 January 2008 regarding the admission of exhibits presented during the testimony of Anthony Oberschall (“Decision of 24 January 2008”), the Chamber denied the admission into evidence of document MFI P16, until such time as the Prosecution provided the exact date that the television show was aired and the name of the network on which the show was broadcast.⁵

9. The Prosecution indicated in a motion filed on 13 October 2009 (“Motion of 13 October 2009”), that document MFI 16 came from a Croatian television programme entitled “*Slikom na sliku*” broadcast on 1 April 1992, and that this was moreover a video clip originally broadcast on the Serbian network “TV Belgrade”.⁶ The Prosecution, furthermore, sought the admission into evidence of documents 65 *ter* 1065 and 65 *ter* 1062, which were, respectively, the transcript of the session of the Serbian Parliament held on 1 April 1992 (“Session of 1 April 1992”) and the speech given by the Accused during this session, published in his book entitled “*Poslaničke besede/Speeches of the Deputy, Belgrade 1993*”.⁷

² Hearing of 11 December 2007, T(F), pp. 2021-2024.

³ Hearing of 11 December 2007, T(F), pp. 2023, 2025.

⁴ Hearing of 11 December 2007, T(F), p. 2024.

⁵ “Decision Regarding the Admission of Evidence Presented During the Testimony of Anthony Oberschall”, 24 January 2008 (“Decision of 24 January 2008”), para. 18.

⁶ “Motion to Admit MFI P00016 and Related Exhibits”, 13 October 2009 (“Motion of 13 October 2009”), para. 3.

⁷ Motion of 13 October 2009, para. 6.

10. The Accused received the BCS version of the Motion of 13 October 2009 on 17 November 2009⁸ and did not respond within the 14-day time-limit afforded him under Rule 126 *bis* of the Rules.

11. The Chamber considers that documents 65 *ter* 1065 and 65 *ter* 1062 bring clarification to the words spoken by the Accused during the Session of 1 April 1992 and are indispensable for determining the *prima facie* probative value of the journalist's commentary appearing in document MFI P16.

12. The Chamber finds then that Exhibit MFI P16 and documents 65 *ter* 1065 and 65 *ter* 1062 present sufficient indicia of relevance, reliability and probative value to support their admission into evidence.

2. Exhibit MFI P19

13. During the hearing of 12 December 2007, the Prosecution sought the admission into evidence of document 65 *ter* 6058b, which was a video recording of a speech of the Accused that the Prosecution alleges was delivered on 14 April 1992.⁹

14. During the hearing, the Accused disputed the date of the speech, specifying that it was a speech given in 1995 at a meeting in Loznica.¹⁰

15. The Chamber decided to mark this document for identification purposes as "MFI P19", pending further verification.¹¹

16. In the Decision of 24 January 2008, the Chamber refused to admit into evidence document MFI P19, unless the Prosecution disclosed the exact date of the images shown in this video recording.¹²

17. In a Motion filed 20 January 2010, the Prosecution clarified that Exhibit MFI P19 was a speech given by the Accused on 14 April 1995 in Loznica,¹³ as the Accused had submitted.

⁸ See the Official Record (Procès-Verbal) of the Reception of BCS Translation, filed on 14 December 2009.

⁹ Hearing of 12 December 2007, T(F), pp. 2060-2063.

¹⁰ Hearing of 12 December 2007, T(F), pp. 2062.

¹¹ Hearing of 12 December 2007, T(F), pp. 2063.

¹² Decision of 24 January 2008, para. 21.

18. The Chamber finds therefore that document MFI P19 presents sufficient indicia of relevance, reliability and probative value to be admitted into evidence.

B. Document Tendered Through Witness Milorad Vojnović

19. At the hearing of 5 November 2008, the Prosecution requested the admission into evidence of document 65 *ter* 854, which was a report from 22 December 1991, submitted by the 80th Motorised Brigade to the Command of the 1st Military District, concerning the murder of three members of the *Leva Supoderica* Unit.

20. At the hearing, the Prosecution contested the authenticity of this document.¹⁴

21. The Chamber decided to mark this document for identification purposes as “MFI P605”, pending further verification.¹⁵

22. On the basis of such a verification, the Chamber notes that Witness Milorad Vojnović recognized the stamp of his unit, which is on this document¹⁶ and which he signed.

23. The Chamber finds therefore that document MFI P605 presents sufficient indicia of relevance, reliability and probative value to be admitted into evidence.

C. Document Tendered Through Witness Višnja Bilić (“MFI P630”)

24. At the hearing of 18 November 2008, the Prosecution requested the admission into evidence of document 65 *ter* 7389, which was a research questionnaire for disappeared persons cited in Annex III of the Indictment.¹⁷

25. The Chamber notes that in a decision of 13 November 2008, it declined to rule on the request to add to the 65 *ter* List a number of questionnaires pertaining to

¹³ “Motion to Admit MFI P00019, P00326, P00327 and P00328”, 20 January 2010, para. 6.

¹⁴ Hearing of 5 November 2008, T(F), pp. 11457.

¹⁵ Hearing of 5 November 2008, T(F), pp. 11465.

¹⁶ Hearing of 5 November 2008, T(F), pp. 11454.

¹⁷ Hearing of 18 November 2008, T(F), pp. 11812.

disappeared persons listed in Annex III of the Indictment,¹⁸ including document MFI P630, until such time as it received the English translation of these questionnaires.¹⁹

26. As the English translation of document MFI P630 is now available, the Chamber considers that this document presents sufficient indicia of relevance, reliability and probative value to be admitted into evidence.

IV. DISPOSITION

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 89 and 95 of the Rules,

ADMITS into evidence the documents marked in the table annexed below.

ORDERS the Registry to assign an exhibit number for the Prosecution to documents 65 *ter* 1062 and 65 *ter* 1065.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of April, 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

¹⁸ This is the Third Amended Indictment, 7 December 2007 (French version filed on 2 January 2008).

¹⁹ "Decision on the Expert Status of Ms Višna Bilić and the Prosecution's Motion for Leave to Amend the Rule 65 *ter* Exhibit List", 13 November 2008, para. 16.

ANNEX

| Number | Party Requesting Admission of the Exhibit | Admitted/Not Admitted/Marked for Identification (MFI) |
|--------------------|---|---|
| P16 | Prosecution | Admitted |
| 65 <i>ter</i> 1062 | Prosecution | Admitted |
| 65 <i>ter</i> 1065 | Prosecution | Admitted |
| P19 | Prosecution | Admitted |
| P605 | Prosecution | Admitted |
| P630 | Prosecution | Admitted |