



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: 29 June 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: 29 June 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**REDACTED VERSION OF THE “DECISION IN RECONSIDERATION OF
THE DECISION OF 15 MAY 2007 ON VOJISLAV ŠEŠELJ’S MOTION FOR
CONTEMPT AGAINST CARLA DEL PONTE, HILDEGARD UERTZ-
RETZLAFF AND DANIEL SAXON”**

The Office of the Prosecutor

Mr Mathias Marcussen

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 motion of Vojislav Šešelj (“Accused”) for contempt against Carla Del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon, filed confidentially on 23 March 2007 (“Motion for Contempt”).¹

II. PROCEDURAL BACKGROUND

2. On 23 March 2007, the Motion for Contempt was filed, by means of which the Accused alleges pressure or intimidation on the part of the Office of the Prosecutor (“Prosecution”) towards [redacted].²

3. The Prosecution’s Response was filed on 12 April 2007 confidentially and partially *ex parte* (“Response”).³

4. By Order dated 15 May 2007 and issued publicly, Chamber III, seated in a different formation, ordered a stay for purposes of ruling on the Motion for Contempt until the conclusion of the trial in order to avoid delaying the start of the trial (“Order”).⁴

5. On 5 June 2007, a confidential motion of the Accused was filed, seeking reconsideration of the Order.⁵

6. On 19 July 2007, the Chamber rendered a decision confirming the Order.⁶

7. [Redacted].⁷ [Redacted].⁸

¹ English translation of BCS original titled “Motion by Professor Vojislav Šešelj for Trial Chamber III to Instigate Proceedings for Contempt of the Tribunal against Carla del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon”, confidential document, 23 March 2007.

² [Redacted.]

³ “Prosecution Response to Vojislav Šešelj’s Motion to Instigate Contempt Proceedings with Confidential Annexes A-J and Confidential & Ex Parte Annex K”, 12 April 2007, confidential and partially *ex parte*.

⁴ “Order regarding Mr. Šešelj’s Motion for Contempt Proceedings”, 15 May 2007.

⁵ French translation of BCS original of “Professor Vojislav Šešelj’s Motion for Trial Chamber to Review its Order of 15 May 2007 Postponing a Decision on the Motion to Instigate Contempt Proceedings Until After the Completion of the Trial (Submission No. 293)”, 7 August 2007.

⁶ “Decision on the Accused’s Motion for Review of the Order of 15 May 2007”, 19 July 2007.

8. [Redacted]⁹[redacted],¹⁰ [redacted]¹¹[redacted].

III. CONCERNING RECONSIDERATION

A. Applicable Law

9. In the case-law of the Tribunal, a Trial Chamber possesses the inherent authority to reconsider its own decisions if the reasoning of the decision in question contains a clear error or if particular circumstances, which may be new facts, justify its reconsideration in order to prevent injustice.¹²

B. Discussion

10. The Chamber points out that certain witnesses who appeared after this trial opened, when testifying before the Chamber, referred to pressure or to attempts to intimidate to which they were subjected by investigators for the Prosecution as well as to irregularities during their preliminary interviews by the Prosecution. Among these witnesses, the Chamber drew particular attention to:

- Prosecution Witness Nebojša Stojanović (formerly VS-048) who, during the hearings on 22 and 23 July 2008 declared that he and his family were subjected to tremendous pressure by the Prosecution.¹³ During his courtroom testimony, Nebojša Stojanović told specifically of receiving 30 to 50 telephone calls per day from the Prosecution, from December 2007 onwards.¹⁴ Nebojša Stojanović likewise added, without specifying the statement to which he was referring, that he did not learn about the statement he gave to the Prosecution until the time after he had entered into contact with the Defence and that he then recognised that the contents did not match his

⁷ [Redacted].

⁸ [Redacted].

⁹ [Redacted].

¹⁰ [Redacted].

¹¹ [Redacted].

¹² *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Borislav Pušić*, Case No. IT-04-74-T, “Decision on Request for Reconsideration and Certification to Appeal the Decision for Admission of the Statement of Jadranko Prlić”, 8 October 2007, p. 11; *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, “Decision on Defence’s Request for Reconsideration”, 16 July 2004, pp. 3-4.

¹³ Nebojša Stojanović, T(F), p. 9673.

¹⁴ Nebojša Stojanović, T(F), pp. 9787 – 9789.

words. Nebojša Stojanović added further that, at the time, he had signed the statement without re-reading it,¹⁵

- Chamber Witness Vojislav Dabić (referenced in certain submissions under VS-029), who testified on 26 and 27 January 2010 and declared that he signed the statement he had given the Prosecution only in its English version.¹⁶ Vojislav Dabić added that the Prosecution had told him that if he testified, after that he could go to America, that he would get a good salary and would get money;¹⁷
- Chamber Witness Jovan Glamočanin (formerly VS-044), who, during the hearings on 10 and 11 December 2008 stated that Investigator [redacted] had likely added information, at his own initiative, to the preliminary statement dated 26, 27, 28, and 30 May 2003.¹⁸ Jovan Glamočanin likewise accused this investigator of having forced him to sign the statement, threatening to continue questioning him until he signed.¹⁹ He added, furthermore, that he signed only his English statement and that he did so without reading it over;²⁰
- Prosecution Witness [redacted] stated that he had not re-read his statements in full before signing them and that his statement from 1996 does not precisely correspond to his words at the time;²¹
- Prosecution Witness Aleksandr Stefanović (formerly VS-009), who told the Chamber during the hearings on 25 and 26 November 2008 that it was with the “encouragement” of Zoran Đinđić, then-Prime Minister of Serbia, of Vladan Batić, Minister of Justice, and of Carla Del Ponte that he came to The Hague in 2003 to make a statement, with the objective of eliminating the Accused from the political scene, in exchange for him not ever being personally disturbed by the Tribunal.²² He said that he signed his statements

¹⁵ Nebojša Stojanović, T(F), p. 9675.

¹⁶ Vojislav Dabić, T(F), p. 15106.

¹⁷ Vojislav Dabić, T(F), p. 15107.

¹⁸ Jovan Glamočanin, T(F), p. 12857.

¹⁹ Jovan Glamočanin, T(F), p. 12857.

²⁰ Jovan Glamočanin, T(F), pp. 12894-12896, 12917, 12929-12931, 12942.

²¹ [Redacted].

²² Aleksandr Stefanović, T(F), pp. 12064, 12226-12227.

without reading them and without being given a translation of them.²³ He stated further that his signature had been scanned and affixed to the bottom of his statements.²⁴ Moreover, the Witness stated that he received an exceptional number of telephone calls from the Tribunal.²⁵

11. The Chamber emphasizes, furthermore, that it recently learned of the letter of 23 December 2009 sent by the Prosecution to the Accused, relating to the circumstances surrounding the interview of Witness Zoran Rankić (formerly VS-017) by Prosecution investigator [redacted], which took place on 4 August 2003, conveyed by interpreter [redacted] and describing certain improprieties during this interview.²⁶

C. Conclusion

12. The Chamber is of the view that, as the testimony of certain witnesses in court, and also the statement by [redacted], constitute new facts that justify reconsideration of the Order and that it is necessary for the Chamber to be seized *sua sponte* of the Motion for Contempt at this stage of the proceedings, without waiting for proceedings to conclude, out of concern for the expeditious conduct of the trial and in order to have a clear glimpse of the grievances alleged by the Accused, based on the findings of a third party (the *amicus curiae*).

IV. CONCERNING THE ALLEGATIONS OF CONTEMPT AGAINST THE PROSECUTION

A. Arguments of the Parties

1) Arguments of the Accused

13. According to the Accused, the Prosecution attempted to contact a large number of persons, aiming to persuade them to testify against him. The Prosecution allegedly obtained the statements of [redacted]²⁷ illegally, by threatening, intimidating

²³ Aleksandr Stefanović, T(F), pp. 12074-12075, 12102, 12202.

²⁴ Aleksandr Stefanović, T(F), p. 12173.

²⁵ Aleksandr Stefanović, T(F), p. 12106.

²⁶ Zoran Rankić, T(F), pp. 16003-16005 (hearing of 12 May 2010).

²⁷ [Redacted].

and/or buying them off.²⁸ The Accused is of the belief that Carla Del Ponte, Hildegard Uertz-Retzlaff and Daniel Saxon are responsible, respectively, as the ICTY Prosecutor and representatives of the Prosecution at the time of the underlying facts alleged.²⁹ The Accused argues, in light of how many persons have declared that they were mistreated by the Prosecution, that this is a normal and customary mode of operations for the Prosecution.³⁰

14. The Accused believes, furthermore, that the Prosecution is responsible for the suicide of Milan Babić inasmuch as he was unable to bear up under the pressure exerted on him by the Prosecution.³¹

15. According to the Accused, the Prosecution enjoyed full discretion to kidnap individuals in Serbia, without opposition from anyone.³²

16. The Accused annexes to his Motion the statements (“Statement(s)”) of [redacted].³³ The Accused likewise annexes two other Statements signed by [redacted].

17. The Statements allege as fact that the Prosecution indeed contacted these persons and that interviews were indeed conducted by investigators working for the Prosecution.³⁴ As such, the Statements mention sleep deprivation during interviews,³⁵ psychological pressuring,³⁶ an instance of blackmail (the investigators offered relocation in exchange for the testimony they hoped to obtain),³⁷ threats (one, for example, about preparing an indictment against a witness if he refused to testify),³⁸ or even illegal payments of money.³⁹ According to certain Statements, the testimony produced from the interviews with the investigators from the Prosecution was not (or

²⁸ Motion, p. 4.

²⁹ Motion, p. 5.

³⁰ Motion, p. 19.

³¹ Motion, p. 20.

³² Motion, p. 19.

³³ [Redacted].

³⁴ The Chamber is bound to point out that only the signature on these Statements was authenticated by a Serbian court, not their contents (see the certifications at the end of the Statements and see Vojislav Dabić, T(F) pp. 15108-15109; [redacted]; Asim Alić, T(F) p. 7142).

³⁵ See the Statement of [redacted] (Motion, p. 26).

³⁶ See, e.g., the Statements of [redacted] (respectively, Motion, pp. 31, 33, 35, 41, 44).

³⁷ See, e.g., the Statements of [redacted] (respectively, Motion, pp. 27, 43).

³⁸ See, e.g., the Statements of [redacted] (respectively, Motion, pp. 27, 38, 53, 56).

³⁹ Statement of [redacted] (Motion, p. 53. [redacted] – members of the Prosecution – allegedly offered him a blank cheque so that they could buy his testimony); Statement of [redacted] (Motion, p. 59).

almost never) re-read by the persons signing it.⁴⁰ In the Statement signed by [redacted], there is even an account of him allegedly signing the first page and the members of the Prosecution allegedly signing his initials on the other pages themselves.⁴¹ In the Statement signed by [redacted], there is mention that he allegedly had an interview with the members of the Prosecution in a public place.⁴² Lastly, in the Statement signed by [redacted], it is mentioned that he was allegedly poisoned.⁴³

18. Various members of the Prosecution are cited by name in each of the Statements. Investigator [redacted] is cited in the Statement signed by [redacted];⁴⁴ Investigators [redacted] are cited in the Statement signed by [redacted];⁴⁵ Investigators [redacted] are called into question in the Statement signed by [redacted];⁴⁶ in the Statement signed by [redacted], it is said that Investigator [redacted] asked him to testify against the Accused in exchange for a reduced sentence, money or a new identity.⁴⁷ However, it is principally Investigator [redacted] who is implicated by several of the Statements.⁴⁸

2) Response of the Prosecution

19. The Prosecution submits that the Motion for Contempt and the Statements describe false allegations.⁴⁹ It points out the context in which the Motion for Contempt must be placed to obtain a proper sense of perspective⁵⁰ and conveys its substantial concern regarding the manner in which these witnesses all of a sudden produced the Statements.⁵¹

⁴⁰ Statements of [redacted], (Motion, pp. 63, 64).

⁴¹ Statement of [redacted], (Motion, p. 44).

⁴² Statement of [redacted], (Motion, p. 47).

⁴³ Statement of [redacted] (Motion, p. 26).

⁴⁴ Statement of [redacted] (Motion, p. 65).

⁴⁵ Statement of [redacted] (Motion, pp. 68 and 71).

⁴⁶ Statement of [redacted], (Motion, pp. 53-54).

⁴⁷ Statement of [redacted], (Motion, p. 61).

⁴⁸ See, e.g., the Statements by [redacted] (respectively, Motion, pp. 30, 33, 35, 43, 56).

⁴⁹ Response, para. 3.

⁵⁰ Motion, pp. 6-10.

⁵¹ Motion, p. 13.

20. The Prosecution rejects the idea that the Serbian government is wholly devoted to anything the Prosecution might do, even if this involved illegal actions and considers these allegations to be utterly devoid of factual basis.⁵²

21. The Prosecution denies the allegations concerning the suicide of Milan Babić and recalls that the report of the Vice-President of the Tribunal concluded that the Prosecution was not to blame.⁵³

22. The Prosecution believes that certain allegations contained in the Motion for Contempt and the Statements are improbable⁵⁴ through and through and that some of these Statements do not in any way support the allegations of contempt.⁵⁵

23. In order to show the extent to which the allegations are groundless, the Prosecution takes as an example the statement of [redacted] and compares the contents of this Declaration with the transcript of the interview.⁵⁶

B. Applicable Law

24. Even though the jurisdiction of the Tribunal in matters of contempt has not been explicitly defined by the Statute, it is nonetheless well established that the Tribunal has, in virtue of its judicial function, an inherent power to proceed in such a manner that nothing is allowed to thwart its exercise of the powers explicitly conferred upon it by the Statute and that its fundamental judicial function is preserved.⁵⁷ Thus, the Tribunal enjoys intrinsic authority to sanction any conduct that interferes with the administration of justice.⁵⁸

25. Pursuant to Rule 77 (A) (iv) of the Rules of Procedure and Evidence (“Rules”), the Chamber may hold in contempt a person who “threatens, intimidates,

⁵² Response, para. 16.

⁵³ Response, para. 17, *citing* the “Report on the Death of Milan Babić”, 8 June 2006.

⁵⁴ Response, para. 21.

⁵⁵ Response, paras 22,23.

⁵⁶ Response, paras 24-33.

⁵⁷ *The Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, “Judgement on Allegations of Contempt Against Prior Counsel, Milan Vujin,” 31 January 2000, para. 13; *The Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR77, “Judgement on Appeal by Mr Anto Nobile against Findings of Contempt”, 30 May 2001, para. 36.

⁵⁸ *Vujin* Judgement, para. 13. See also *id.*, paras 18 and 26 (a); *Nobile* Judgement, para. 30.

causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber”.

26. Under the provisions of Rule 77 (C) (ii) of the Rules, when a Chamber has reason to believe that a person may be in contempt of the Tribunal, it may, “where the Prosecutor, in the view of the Chamber, has a conflict of interest with respect to the relevant conduct, direct the Registrar to appoint an *amicus curiae* to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings”.

C. Discussion

27. As specified in paragraph 10 *supra*, the Chamber has pointed out, after hearing witnesses of the Prosecution and of the Chamber, that some of the witnesses had referred to pressure and intimidation to which they were subjected by investigators for the Prosecution.

28. The Chamber notes furthermore that the circumstances surrounding the interview of Witness Zoran Rankić, described by interpreter [redacted] constitute important information that must be taken into consideration and that warrant further exploration.⁵⁹

29. This information is taken quite seriously by the Chamber, which refuses to allow any doubt to fester concerning a possible violation of the rights of the Accused and concerning the investigation techniques employed by certain members of the Prosecution in this case.

D. Conclusion

30. Taking into account all of the information cited above and in keeping with Rule 77 (c) (ii) of the Rules, the Chamber finds that an *amicus curiae* ought to investigate the Motion for Contempt and inform the Chamber whether there exist

⁵⁹ See *supra*, para. 11.

prima facie sufficient grounds to initiate a proceeding for contempt against certain members of the Prosecution.

31. Applying Rule 77 (A) (iv), the investigation will cover: (1) witnesses who have appeared before the Chamber; (2) witnesses who have not yet appeared but who are potential Defence witnesses according to the Accused.⁶⁰ The investigation will not, at this stage, cover [redacted] referred to by the Motion for Contempt as the Accused nowhere indicates that they will potentially become witnesses for the Defence.

V. DISPOSITION

32. For the foregoing reasons,

PURSUANT TO Rules 54 and 77 (c) (ii) of the Rules, the Chamber

- (1) **RECONSIDERS PROPRIO MOTU** the Order of 15 May 2007.
- (2) **ORDERS** the Registrar to appoint an *amicus curiae* who must absolutely possess investigative experience, such as that possessed by an examining judge or magistrate exercising similar functions, who has a command of the French language to the extent possible and possesses good knowledge of the situation in the former Yugoslavia.
- (3) **ORDERS** the Registry, the Prosecution and the Accused to disclose to the *amicus curiae* as soon as possible all of the documents that the *amicus curiae* deems necessary to the proper conduct of his or her investigation, including any confidential documents and confidential and *ex parte* documents filed in this case.
- (4) **ORDERS** the Registry to provide the *amicus curiae* with all of the financial and logistical means necessary to carry out his or her investigation effectively.

⁶⁰ [redacted]

- (5) **ORDERS** the *amicus curiae* to investigate possible intimidation or pressure, albeit indirect, exerted by certain investigators for the Prosecution in this case and to investigate techniques used by these investigators to obtain preliminary written statements from witnesses, particularly insofar as concerns the following persons who have testified or may potentially testify in this case: [redacted].
- (6) **ORDERS** the *amicus curiae* to inform the Chamber whether adequate grounds exist for initiating contempt proceedings towards members of the Prosecution and to identify those very persons by name.
- (7) **ORDERS** the *amicus curiae* to request co-operation from the War Crimes Chamber of the District Court in Belgrade and its counterparts in Bosnia and Herzegovina and in Croatia if necessary, in order to proceed as quickly as possible and conduct investigations on site as effectively as possible.
- (8) **DECIDES** that the *amicus curiae* shall enjoy complete authority to make findings for the investigation entrusted to him or her by the Chamber, in accordance with paragraph 5 of the disposition of this Decision.
- (9) **ORDERS** that the *amicus curiae* submit a report containing his or her conclusions, preferably in French, within 6 months, to run from the appointment of the *amicus curiae* by the Registry, a time which may be extended upon receipt of a properly argued request from the *amicus curiae*.
- (10) **DECIDES that**, in carrying out his or her mandate, the *amicus curiae* is obliged to respect the confidential and/or *ex parte* nature of the documents disclosed to him or her by the Registry, the Prosecution and the Accused.

