



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: 17 December 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: 17 December 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON REQUEST FOR ADMISSION INTO EVIDENCE OF
DOCUMENTS MFI P293, MFI P297, MFI P326, MFI P327 and MFI P328**

The Office of the Prosecutor

Ms 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, on the one hand, of the Oral Request of the Office of the Prosecutor (“Prosecution”) made at the public hearing of 20 March 2008 for the admission into evidence of documents MFI P293, MFI P297¹ and, on the other hand, the Oral Request of the Prosecution made at the public hearing of 3 April 2008² as well as the Prosecution public Motion filed on 20 January 2010³ to admit into evidence documents MFI P326, MFI P327 and MFI P328 which were attributed temporary reference numbers at the hearings in this case.

2. The Chambers shall herein rule on the request to admit these documents into evidence.

II. APPLICABLE LAW

3. The Chamber has examined the documents requested for admission in the light of Rule 89 of the Rules of Procedure and Evidence (“Rules”) and the procedure established in the Order of 15 November 2007 setting out the guidelines for the presentation of evidence and the conduct of the parties during the trial.

4. The Chamber recalls, *inter alia*, that at this stage of the proceedings, it will only examine *prima facie* the relevance, reliability and probative value of the tendered evidence and that it need not proceed with its final assessment. This exercise will be conducted at the end of the trial in light of all the Prosecution and Defence documents admitted into evidence.

¹ Hearing of 20 March 2008, T(F) 5104, 5134.

² Hearing of 3 April 2008, T(F) 5723, 5729 and 5731.

³ “Motion to Admit MFI P00019, P00326, P00327 and P00328”, public, 20 January 2010.

III. DISCUSSION

1. Clip of a documentary produced in 2006 by the B-92 broadcasting company entitled “Vukovar, the Final Cut” (“MFI P293”).

5. At the hearing of 20 March 2008, the Prosecution requested the admission into evidence of 65 *ter* document 4143b, marked for identification as “MFI P293”, which is said to correspond to a clip from the documentary “Vukovar, the Final Cut” produced in 2006 by the B-92 broadcasting company.⁴

6. At this hearing the Chamber stated that, since the video clip was hard to understand, there was nothing that would allow the admission of this document,⁵ but the Chamber nevertheless granted the parties the possibility to tender it through a witness.⁶

7. Since document MFI P293 was not tendered for admission through a witness, the request of 20 March 2008 to admit into evidence was therefore rejected.

2. Video clip of an interview with Vojislav Šešelj (“Accused”) (“MFI P297”).

8. At the hearing of 20 March 2008, the Prosecution requested the admission of 65 *ter* document 1836a, marked for identification as “MFI P297”, which corresponds to an undated video clip of an interview given by the Accused from Serbian television.⁷

9. The Chamber pointed out that the video clip dwelt on American air strikes, that is an event outside the scope of the Indictment.⁸ For this reason, the Chamber rendered an oral decision to reject the request for admission into evidence of this video tape.⁹

10. The Chamber confirms that document MFI P297 cannot be admitted into evidence because it refers to an event outside the scope of the Indictment.

⁴ Hearing of 20 March 2008, T(F) 5104- 5107.

⁵ Hearing of 20 March 2008, T(F) 5107.

⁶ Hearing of 20 March 2008, T(F) 5107.

⁷ Hearing of 20 March 2008, T(F) 5134.

3. Excerpts of a speech given by the Accused in Hamilton, Canada (“MFI P326”, “MFI P327” and “MFI P328”).

11. At the hearing of 3 April 2008 the Prosecution requested the admission of 65 *ter* documents 60004a, 60004b and 60004c, marked respectively for identification as “MFI P326”, “MFI P327” and “MFI P328”. According to the Prosecution, these three documents correspond to three clips from the same video tape of a speech delivered around 4 September 1989 by the Accused in Hamilton, Canada.¹⁰ At the hearing of 3 April 2008 the Prosecution also indicated that this video tape was recorded by an amateur and stated that it received the video tape on 14 February 2003 from the Open Society Archives of the Central European University in Budapest.¹¹

12. At the hearing of 3 April 2008, after having watched the three recordings, the Accused indicated that he was not, in general, opposed to the admission into evidence of clips in which he appears and is heard.¹² At this same hearing, the Accused however indicated that he objected to the admission into evidence of these video clips and said that he was in Canada in May, and not in September, 1989.¹³ The Accused also claimed that his voice was distorted but he did not challenge the contents of the speech.¹⁴ The Accused also pointed out that in document MFI P328 there was no indication of when and where it was recorded.¹⁵

13. Bearing in mind the objections raised by the Accused, the Chamber asked the Prosecution to provide additional information on documents MFI P326 and MFI P327 as well as the date and the location of recording of document MFI P328.¹⁶

14. In its public motion filed on 20 January 2010¹⁷ (“Motion”), by way of certifying that documents MFI P326 and P327 were in fact recorded on 4 September 1989 in Hamilton, Canada, the Prosecution provided the following information:

⁸ Hearing of 20 March 2008, T(F) 5135; see also the “Third Amended Indictment”, 7 December 2007 (“Third Amended Indictment”).

⁹ Hearing of 20 March 2008, T(F) 5136.

¹⁰ Hearing of 3 April 2008, T(F) 5723-5728, T(F) 5728-5729 and T(F) 5731-5734 respectively.

¹¹ Hearing of 3 April 2008, T(F) 5723.

¹² Hearing of 3 April 2008, T(F) 5733-5734.

¹³ Hearing of 3 April 2008, T(F) 5726.

¹⁴ Hearing of 3 April 2008, T(F) 5727.

¹⁵ Hearing of 3 April 2008, T(F) 5733-5734.

¹⁶ Hearing of 3 April 2008, T(F) 5728, 5734.

- the reference to a book by the Accused published in 1993 in Belgrade entitled “Varvarska gozba / The Barbarian Feast” with a copy of a newspaper article by Josip Jović, published in the daily paper *Slobodna Dalmacija* on 7 January 1990, which makes reference to a speech given by the Accused in September 1989 in Hamilton, Canada;¹⁸

- a copy of a page from the Open Society Archives internet site, under the heading “Records of the International Monitor Institute”, sub-heading “Europe” and in the series “Balkan Archive”, listing two video clips referring to a speech given on 4 September 1989 by the Accused at the Serbian Orthodox Church of Saint Nicholas in Hamilton, Canada, produced by *Magic Moment Movies Canada*.¹⁹

15. However, in its Motion, the Prosecution failed to indicate when and where document MFI P328 was recorded.²⁰

16. Further, in its Motion the Prosecution claimed that it received the video tape from which documents MFI P326, MFI P327 and MFI P328 are taken on 28 April 2004 from the Open Society Archives of the Central European University in Budapest.²¹

17. The Accused failed to respond to the Motion within the 14-day time limit following the date of receipt of the BCS translation of the text granted under Rule 126 *bis* of the Rules.²² At the hearing of 27 January, the Accused reiterated his objection to the Prosecution’s allegations that he was in Canada on 4 September 1989.²³

18. Regarding the date of receipt by the Prosecution of the video tape which is the source of documents MFI P326, MFI P327 and MFI P328 and which was provided by the Open Society Archives of the Central European University in Budapest, the Chamber notes that, at the hearing of 3 April 2008, the Prosecution stated it received

¹⁷ “Motion to Admit MFI P00019, P00326, P00327 and P00328”, public, 20 January 2010, (“Motion”), para. 11.

¹⁸ Motion, para. 11.

¹⁹ Motion, para. 11, Annex.

²⁰ Motion, para. 12.

²¹ Motion, para. 10.

²² The Accused received the BCS version of the Motion on 22 January 2010 (see: Procès-verbal of Reception filed on 28 January 2010).

²³ Hearing of 27 January 2010, T(F) 15272-15273.

the video tape on 14 February 2003²⁴ while in its Motion the Prosecution claims it received the video tape on 28 April 2004.²⁵

19. Regarding documents MFI P326 and MFI P327, the Chamber concludes that the Prosecution has failed to provide information that would enable the Chamber to verify that the video clips with the date 4 September 1989 written in the bottom right-hand corner of the image, were actually recorded in Hamilton, Canada. The Chamber holds that the Prosecution's reference to a newspaper article by Josip Jović which is given in full in a book by the Accused fails to show that documents MFI P326 and MFI P327 correspond exactly to the above-mentioned speech. Furthermore, the Chamber concludes that the reference to the Open Society Archives internet site only lists video tapes where, under numbers 557 and 558, there is reference to a speech delivered on 4 September 1989 by the Accused in Hamilton, Canada. As these references cannot be accessed on line, the Chamber cannot verify if these clips actually correspond to documents MFI P326 and MFI P327.

20. In the light of these considerations, the Chamber holds that documents MFI P326 and MFI P327 cannot be admitted in evidence.

21. With respect to document MFI P328, the Chamber notes that the Prosecution admits that has no corroborating evidence on when and where the video clip was recorded.²⁶ Consequently, the Chamber holds that, to this day, it has received no elements on the basis of which it can establish with reliability the date of document MFI P328.

22. In the light of these considerations, the Chamber holds that document MFI P328 cannot be admitted into evidence.

²⁴ Hearing of 3 April 2008, T(F) 5723.

²⁵ Motion, para. 10.

²⁶ Motion, para. 12.

IV. DISPOSITION

FOR THE FOREGOING REASONS and pursuant to Rules 89 and 95 of the Rules,

REJECTS the request to admit into evidence documents MFI P293, MFI P297, MFI P326, MFI P327 and MFI P328.

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

_____/signed/_____

Jean-Claude Antonetti

Presiding Judge

Done this seventeenth day of December 2010

At The Hague

The Netherlands

[Seal of the Tribunal]