



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: 6 September 2011

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: 6 September 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**PUBLIC REDACTED VERSION OF “DECISION ON PROSECUTION’S
REQUEST TO OBTAIN WRITTEN BASIS FOR TWO ORAL DECISIONS
HANDLED DOWN 1 DECEMBER 2010” FILED ON 22 AUGUST 2011**

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 oral request by the Office of the Prosecutor (“Prosecution”), brought during the public hearing of 1 December 2010 (“Request of 1 December 2010”),¹ seeking a written basis for the two oral decisions rendered at that same hearing (“Decisions of 1 December 2010”),² firstly pertaining to the request filed confidentially by the Prosecution on 16 June 2010 (“Request of 16 June 2010”)³ with regard to two judgements rendered by the War Crimes Chamber of the Belgrade District Court on 1 June 2010 and then to a submission filed confidentially by the Prosecution on 29 June 2010 comprising *inter alia* an objection to the admission into evidence of the said judgements (“Objection of 29 June 2010”).⁴

II. PROCEDURAL BACKGROUND

2. On 12 March 2009, the War Crimes Chamber of the Belgrade District Court rendered judgement in Case No. K.V. 4/2006 against Milan Lančuzanin – *alias* Kameni – (“*Kameni* Judgement”).⁵

3. On 23 June 2009, the War Crimes Chamber of the Belgrade District Court rendered judgement in Case No. K.V. 9/2008 against Damir Sireta – *alias* Sić – (“*Sić* Judgement”).⁶

4. At the hearing on 30 March 2010, the Chamber informed the parties that it was in possession of the *Kameni* Judgement and the *Sić* Judgement (“Belgrade

¹ Hearing of 1 December 2010, Transcript in French (“T(F)”) 16548-16551 (“Request of 1 December 2010”).

² Hearing of 1 December 2010, T(F) 16510-16511 (“Decisions of 1 December 2010”).

³ “Prosecution’s Request for Notice of Relevance of Local Vukovar Judgements”, confidential, 16 June 2010.

⁴ “Prosecution’s Objection to the Admission of Domestic Judgements and Request for Disclosure”, confidential with annex, 29 June 2010.

⁵ Belgrade District Court, War Crimes Chamber, Case No. K.V. 4/2006, “Judgment Against Co-Accused Miroljub Vujović, Stanko Vujanović, Predrag Milojević, Đorđe Šošić, Miroslav Đanković, Saša Radak, Milan Vojnović, Jovica Perić, Milan Lančuzanin, Predrag Dragović, Ivan Atanasijević, Nada Kalaba and Goran Mugoša”, 12 March 2009 (“*Kameni* Judgement”).

⁶ Belgrade District Court, War Crimes Chamber, Case No. K.V. 9/2008, “Judgment Against Damir Sireta”, 23 June 2009 (“*Sić* Judgement”).

Judgements”),⁷ noted that these concerned individuals who had participated in the events at Vukovar⁸ and asked the parties to present their observations concerning the possibility of admitting the Belgrade Judgements into evidence.⁹ Each of the parties made known its opinion.¹⁰

5. At that same hearing, the Prosecution asked the Chamber to provide information concerning the grounds for admitting the Belgrade Judgements into evidence¹¹ and indicated that it would bring a written request concerning the matter.¹²

6. Again during the hearing of 30 March 2010, the Chamber responded to the Prosecution’s request, indicating that the Belgrade Judgements pertained to the events which took place at Vukovar Hospital and to the alleged crimes at Ovčara,¹³ events likewise within the scope of the indictment in this case (“Indictment”).¹⁴ The Chamber specified that it might for that reason lie in the interest of justice to admit them into evidence.¹⁵

7. At the hearing of 14 June 2010, the Chamber rendered an oral decision *proprio motu* to supplement its answer to the Prosecution at the hearing of 30 March 2010 (“Decision of 14 June 2010”).¹⁶ The Chamber pronounced first that, on the one hand, the Belgrade Judgements were relevant as to the merits inasmuch as they related to the events which took place at Vukovar Hospital and to the crimes committed in Ovčara in November 1991¹⁷ and, on the other hand, that they might assist the Chamber in its estimation of the credibility of Witnesses VS-016 and VS-065 (“Witnesses”), as the latter also testified in this case.¹⁸ The Chamber gave the parties leave to submit their observations concerning the Belgrade Judgements and to do so

⁷ Hearing of 30 March 2010, T(F) 15859.

⁸ Hearing of 30 March 2010, T(F) 15859, 15864.

⁹ Hearing of 30 March 2010, T(F) 15859.

¹⁰ Hearing of 30 March 2010, T(F) 15859, 15861, as concerns the Accused; T(F) 15863-15866, as concerns the Prosecution.

¹¹ Hearing of 30 March 2010, T(F) 15863-15864.

¹² Hearing of 30 March 2010, T(F) 15866.

¹³ Hearing of 30 March 2010, T(F) 15863-15864.

¹⁴ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67, Third Amended Indictment, filed 7 December 2007 (“Indictment”).

¹⁵ Hearing of 30 March 2010, T(F) 15863-15864.

¹⁶ Hearing of 14 June 2010, T(F) 16099-16100 (private session) (“Decision of 14 June 2010”).

¹⁷ Decision of 14 June 2010: the Chamber also found that the Belgrade Judgements had sufficient indicia of reliability and probative value.

within a time-limit of 15 days, running from reception of the Belgrade Judgements by the Prosecution and by the Accused.¹⁹

8. [Redacted].²⁰

9. On 16 June 2010, the Prosecution filed the Request of 16 June 2010.

10. The Accused did not respond to the Request of 16 June 2010 within the time-limit of 14 days assigned to him under Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”).²¹

11. On 29 June 2010, the Prosecution filed the Objection of 29 June 2010.

12. The Accused did not respond to the Request of 16 June 2010 within the time-limit of 14 days assigned to him under Rule 126 *bis* of the Rules.²²

13. At the hearing of 1 December 2010, the Chamber handed down the Decisions of 1 December 2010, holding that the Request of 16 June 2010 and the Objection of 29 June 2010 were moot.²³ As concerns, initially, the Request of 16 June 2010, the Chamber indicated that it had already expressed its views concerning the relevance of the Belgrade Judgements in the Decision of 14 June 2010.²⁴ As then concerns the Objection of 29 June 2010, the Chamber pointed out that, of course, it could only base itself in this instance on exhibits admitted into evidence and added, furthermore, that it would not admit into evidence judgements that were not deemed final.²⁵

14. At that same hearing, the Prosecution brought the Request of 1 December 2010.²⁶

¹⁸ VS-016 testified in this case on 28 and 29 October 2008; VS-065 testified in this case on 8 and 9 January 2009.

¹⁹ Decision of 14 June 2010. The Chamber ordered, as well, that the Registry immediately dispatch a copy of both judgements, in English for the Prosecution and in BCS for the Accused.

²⁰ [Redacted].

²¹ The Accused received the BCS translation of the Request of 16 January 2010 on 9 August 2010 (see procès-verbal of reception filed 13 August 2010).

²² The Accused received the BCS translation of the Objection of 29 June 2010 on 7 July 2010 (see procès-verbal of reception filed 9 July 2010).

²³ Hearing of 1 December 2010, T(F) 16510-16511.

²⁴ Hearing of 1 December 2010, T(F) 16510.

²⁵ Hearing of 1 December 2010, T(F) 16511.

²⁶ Hearing of 1 December 2010, T(F) 16548-16551.

15. The Accused did not respond to the Request of 1 December 2010 within the time-limit of 14 days assigned to him under Rule 126 *bis* of the Rules.

III. ARGUMENTS OF THE PARTIES

A. Arguments by the Prosecution

16. In the Request of 16 June 2010, the Prosecution is requesting additional clarification, notwithstanding the explanations provided by the Chamber during the hearing of 30 March 2010 and in the Decision of 14 June 2010, concerning both the paragraphs the Chamber considers reliable and relevant to the merits and the paragraphs the Chamber deems relevant to the assessment of the credibility of Witnesses VS-016 and VS-065.²⁷

17. [Redacted],²⁸ [redacted].²⁹

18. [Redacted], the Prosecution objects,³⁰ firstly, to the admission into evidence of the said Belgrade Judgements on grounds that their admission would prejudice the Prosecution's right to a fair trial,³¹ [redacted],³² [redacted],³³ [redacted].

19. The Prosecution then objects, basing itself on the right to a fair trial, to the Chamber obtaining *proprio motu* certain documents, *ex parte* from both parties on occasion, to review them in this case, without those documents firstly being admitted into evidence.³⁴ [Redacted].³⁵ [Redacted].³⁶

20. Bearing this in mind, the Prosecution is asking the Chamber to disclose to the parties all of the documents which it has obtained and reviewed *ex parte*,³⁷ all of the requests made seeking to obtain such documents and all of the responses to these

²⁷ [Redacted].

²⁸ [Redacted].

²⁹ [Redacted].

³⁰ [Redacted].

³¹ [Redacted].

³² [Redacted].

³³ [Redacted].

³⁴ [Redacted].

³⁵ [Redacted].

³⁶ [Redacted].

³⁷ [Redacted].

requests,³⁸ indicating the Chamber's intended use³⁹ and how these might be relevant to the evidence, allegations and themes raised by the case.⁴⁰

B. Arguments by the Accused

21. At the hearing of 30 March 2010⁴¹ and the hearing of 14 June 2010,⁴² the Accused told the Chamber that, in principle, he was not opposed to the admission into evidence of the judgements rendered by the "Belgrade Court".⁴³

22. The Accused responded neither to the Request of 16 June 2010, nor to the Objection of 29 June 2010, nor to the Request of 1 December 2010 within the time-limit of 14 days assigned to him under Rule 126 *bis* of the Rules.⁴⁴

IV. APPLICABLE LAW

23. In accordance with Rule 89 (C) of the Rules and the procedure set forth in the Order of 15 November 2007 setting out the guidelines for the presentation of evidence ("Order of 15 November 2007"),⁴⁵ the Chamber may admit any evidence provided it is relevant, has probative value and is not substantially outweighed by the need to ensure a fair trial.⁴⁶

24. Barring exceptional circumstances, documents are to be presented by way of witnesses.⁴⁷ Nevertheless, the Chamber is not subject to any obligation, whether pursuant to the Order of 15 November 2007 or, in the Chamber's view, pursuant to Rule 98 of the Rules, to obtain additional evidence solely through the parties, provided that they have been heard in this regard in advance.

³⁸ [Redacted].

³⁹ [Redacted].

⁴⁰ [Redacted].

⁴¹ Hearing of 30 March 2010, T(F) 15859 and 15861.

⁴² [Redacted].

⁴³ Hearing of 30 March 2010, T(F) 15859 and 15861 (the expression in quotation marks is reproduced as spoken by the Accused). [Redacted].

⁴⁴ The Accused received the BCS translation of the Request of 16 June 2010 on 9 August 2010 (see procès-verbal of reception filed 13 August 2010) and the BCS translation of the Objection of 29 June 2010 on 7 July 2010 (procès-verbal of reception filed 9 July 2010).

⁴⁵ "Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial", public, 15 November 2007.

⁴⁶ Order, Annex, para. 1. [Redacted].

⁴⁷ Order, Annex, para. 1.

25. The Chamber likewise underscores the provisions of Rule 89 (B) of the Rules, whereby the Chamber is bound to apply, in keeping with the Statute and general principles of law, “rules of evidence which will best favour a fair determination of the matter”.

26. The Chamber further recalls that, at this stage of the proceedings, it merely conducts a *prima facie* review of the relevance, reliability and probative value of the evidence submitted and that it is not supposed to conduct a final assessment until the end of the trial, after all of the evidence, both Prosecution and Defence, has been admitted into the record.

V. DISCUSSION

27. As an initial matter, the Chamber recalls that in the Decisions of 1 December 2010, it held that the Request of 16 June 2010 and the Objection of 29 June 2010 were moot⁴⁸ inasmuch as it previously laid out the grounds for these decisions during the hearing of 30 March 2010⁴⁹ and in the Decision of 14 June 2010.⁵⁰ Nevertheless, in order to provide a written basis for the Decisions of 1 December 2010 and to respond more precisely to the Request of 16 June 2010 and to the Objection of 29 June 2010, the Chamber is taking this decision.

A. Relevance of the Belgrade Judgements

28. As concerns the issue relating to the relevance on the merits of the Belgrade Judgements,⁵¹ the Chamber clarifies that they do relate to the territory of the Serbian Autonomous District of Slavonia, Baranja and Western Srem as well as to the period of Autumn 1991, as targeted by the Indictment, and specifically to the events which

⁴⁸ Hearing of 1 December 2010, T(F) 16510-16511.

⁴⁹ The Chamber had thus assessed their relevance and possible admission into evidence, Decision of 14 June 2010, [redacted].

⁵⁰ The Chamber had pointed out, on the one hand, that it could only base itself in this case on exhibits admitted into evidence and, on the other hand, that it would not admit into evidence judgements that were not conclusively adjudicated, Decisions of 1 December 2010, Hearing of 1 December 2010, T(F) 16510-16511.

took place at Vukovar Hospital, the Velepomet warehouse and to the crimes allegedly committed at the Ovčara Farm.⁵² Moreover, the Chamber points out that the Belgrade Judgements mention the roles and interplay between the Yugoslav People's Army, the Territorial Defence and the presence of volunteers, particularly the *Leva Supoderica* unit, during the aforementioned occurrences.

29. Finally, the Chamber likewise notes that crucial evidence cited in the Belgrade Judgements was offered by the Witnesses, whose credibility might also be better evaluated by the Chamber, using these Judgements.

B. Consideration Solely of the Evidence Admitted

30. Concerning the Argument by the Prosecution that the Chamber obtained evidence *proprio motu* and *ex parte* on occasion,⁵³ the Chamber recalls that the documents to which the Prosecution refers are public. As previously signalled at the hearing of 1 December 2010, the Chamber is aware of the fundamental distinction between inspecting publicly known documents for informational purposes and taking these documents into account in a judgement by admitting them into evidence on the basis of Rule 94 (A) of the Rules, with such taking into account being strictly limited to the exhibits admitted into evidence.⁵⁴

31. The Chamber, moreover, rejects the Prosecution's argument whereby the fact of the Chamber inspecting the documents and collecting information *ex parte* without informing the parties or inspecting documents not admitted into evidence would run contrary [redacted] to the right of the parties to be informed in connection with their right to fair trial.⁵⁵ The Chamber notes, with regard to the Belgrade Judgements, that it informed the parties that the said Judgements were in the Chamber's possession and

⁵¹ [Redacted].

⁵² Indictment, paras 5-8, 15-21, 28-29 (a) and (b).

⁵³ [Redacted].

⁵⁴ Hearing of 1 December 2010, T(F) 16551.

⁵⁵ See *supra*, para. 19.

that their admission was anticipated, once each party's position was known.⁵⁶ The Chamber recalls that it ordered that the Belgrade Judgements be disclosed to the parties in their own languages, stated that these documents were relevant to this case and invited the parties to submit their observations.⁵⁷ Thus, the Chamber considers that, at this stage, all conditions for a fair trial have been satisfied.

32. Lastly, concerning the Prosecution's request for disclosure, namely, that the Chamber disclose to the parties all of the documents the Chamber may have inspected or obtained *ex parte*,⁵⁸ the Chamber holds that it is not required to disclose to the parties all of the publicly available information it has become aware of, in particular, through the media. The Chamber recalls, in addition, that for the Judgement, it will only use evidence belonging to the record, namely, all of the testimony heard in this case as well as all of the exhibits admitted.⁵⁹

C. The Prosecution's Opposition to Admitting the Belgrade Judgements⁶⁰

33. Concerning the Prosecution's argument that the Chamber is violating the Prosecution's right to a fair trial, as it did not state with specificity what is pertinent in the said Judgements,⁶¹ the Chamber points out that, in this instance, it limited itself to reviewing broadly the Belgrade Judgements for relevance while also waiting for the parties' positions on this aspect.⁶² In addition, the Chamber develops that aspect in this Decision.⁶³

34. [Redacted],⁶⁴ [redacted].

35. [Redacted],⁶⁵ [redacted],⁶⁶ [redacted].

⁵⁶ Hearing of 30 March 2011, T(F) 15859; Decision of 14 June 2010; Hearing of 1 December 2010, T(F) 16550-16551.

⁵⁷ Hearing of 30 March 2011, T(F) 15859; [redacted].

⁵⁸ See *supra*, para. 20.

⁵⁹ See also Decisions of 1 December 2010; Hearing of 1 December 2010, T(F) 16551-16552.

⁶⁰ [Redacted].

⁶¹ [Redacted].

⁶² Hearing of 30 March 2011, T(F) 15864; Decision of 14 June 2010; Decision of 1 December 2010.

⁶³ See *supra*, paras 28-29.

⁶⁴ [Redacted].

⁶⁵ [Redacted].

⁶⁶ [Redacted].

36. In closing, the Chamber has indeed taken note of the Prosecution's opposition to the admission into evidence of the Belgrade Judgements. However, in light of the explanations provided above, the Chamber holds that the Objection of 29 June 2010 is moot, as the Chamber has not admitted and will not admit the Belgrade Judgements into evidence until such time as the parties provide written notice to the Chamber that the Belgrade Judgements have become final and until such time as they have again had the opportunity to develop their position regarding admission into evidence. The Chamber considers, in this instance, that it will, if needed, only order admission into evidence prior to the filing of closing briefs by taking judicial notice on the basis of Rule 94 (A) of the Rules, after having duly reflected upon the parties' positions.

VI. DISPOSITION

37. FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 of the Rules, the Chamber

GRANTS the Request of 1 December 2010 insofar as the Chamber provides, in this Decision, a detailed written basis for the Decisions of 1 December 2010.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this sixth day of September 2011
At The Hague
The Netherlands

[Seal of the Tribunal]