



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: 18 October 2012
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Judgement of: 18 October 2012

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**With partially dissenting opinion from Presiding Judge Jean-Claude Antonetti in
public annex**

**DECISION ON PROSECUTION'S REQUEST FOR NON-DISCLOSURE OF
THREE WITNESS STATEMENTS TO THE ACCUSED**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

TRIAL CHAMBER III 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 (“Chamber” and “Tribunal” respectively),

SEIZED of the request filed by the Office of the Prosecutor (“Prosecution”) as a public document with confidential and *ex parte* Annexes A to C on 28 September 2012, in which the Prosecution seeks to be relieved of its obligation to disclose to Vojislav Šešelj (“Accused”) the statements of three witness (“Statements”) whom the Prosecution deems to be very sensitive and in which the name of the Accused is mentioned,¹

CONSIDERING that, according to the Prosecution, the disclosure exemption for the Statements is necessary, on the one hand, because of the Accused’s conduct, who was convicted three times for contempt of the Tribunal for having published confidential information on his website in violation of the protective measures granted to the witnesses and, on the other, because the Statements do not exculpate the Accused, and, finally, that any references to the Accused in the Statements are of a superficial relevance,²

CONSIDERING that the Accused has not responded to the Request within the deadline set out under Rule 126 *bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”),³

NOTING the decision rendered by Trial Chamber I (“Chamber I”) on 4 July 2006, in which Chamber I, pursuant to Rule 66 (B) of the Rules, ordered the Prosecution to disclose to the Accused all the witness statements in its possession in which the Accused is mentioned by name, and, in case the witnesses concerned were subject to

¹“Prosecution’s Request for Non-Disclosure”, 28 September 2012 (public with confidential and *ex parte* Annexes A to C) (“Request”), paras 1 and 7.

² Request, para. 1.

³ The Accused received the translation into BCS of the Request on 3 October 2012 (*see* procès-verbal of reception filed on 5 October 2012) and, therefore, had until 17 October 2012 to respond.

protective measures, to seek permission from Chamber I for partial disclosure or non-disclosure of the said statements,⁴

CONSIDERING that the Statements form part of the documents that the Prosecution did not intend to use to support the charges against the Accused⁵ and that, *a fortiori*, Witnesses A, B and C were not called to testify in the present case,

CONSIDERING that, bearing in mind the date of the Statements, which were taken, respectively, in February 1995, February 1997 and, most recently, in August 2003, the Chamber deems that the Prosecution was aware of these facts when the Decision of 4 July 2006 was rendered and that, consequently, it had the opportunity and the duty to request, prior to the start of the Accused's trial on 7 November 2007, that they not be disclosed, all the more so because the Decision of 4 July 2006 did not set a deadline for this to be done,

CONSIDERING that the Prosecution does not provide a specific reason in its Request as to why it may have been prevented from filing a non-disclosure request regarding these Statements at an earlier stage in the proceedings,

CONSIDERING that in the Chamber's eyes, nothing justifies the tardy nature of the present Request, which was filed more than six years after the Decision of 4 July 2006, and more than six months after the end of the proceedings in the present case, on 20 March 2012,

CONSIDERING that the extremely tardy nature of the present Request impedes the proper administration of justice and shows serious negligence on the part of the Prosecution,

CONSIDERING that under these circumstances, the Chamber deems it necessary to issue a warning to the Prosecution,

CONSIDERING, that, with regard to the merits of the Request, the Prosecution has demonstrated the potential security risks for the three witnesses,⁶

⁴ *The Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-PT, "Decision on Form of Disclosure", 4 July 2006 (public) ("Decision of 4 July 2006"), paras 16 and 17.

⁵ Decision of 4 July 2006, pp. 6 to 9, and in particular paras 16 and 17.

CONSIDERING, furthermore, that the Accused will not be prejudiced by not receiving the integral Statements since (i) they are not of an exculpatory nature; (ii) the trial has ended and since the Statements are not part of the case-file, they cannot be used against the Accused; (iii) the subjects raised in the Statements were discussed at length in the testimony of several other witnesses and (iv) in any case, the summaries of the relevant passages from the Statements are available to the Accused in the Request itself,⁷

CONSIDERING, furthermore, that redacting these Statements would not be useful because it would mean disclosing information that is anonymous and therefore irrelevant to the Accused,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 of the Rules,

GRANTS the present Request,

AUTHORISES the Prosecution not to disclose the Statements to the Accused,

AND,

WARNS the Prosecution about the extremely tardy and unjustified nature of the present Request.

Presiding Judge Antonetti attaches a partially dissenting opinion.

⁶ The Chamber notes that Witnesses A and B were granted protective measures in all the cases in which they testified. Witness C was not called to testify for health reasons and was therefore not granted protective measures.

⁷ Request, paras 2 to 6. The Chamber notes that the summaries faithfully reproduce the content of the Statements.

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

/signed/

Jean-Claude Antonetti

Presiding Judge

Done this eighteenth day of October 2012

At The Hague

The Netherlands

[Seal of the Tribunal]