



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: 20 March 2013
Original: ENGLISH
French

IN TRIAL CHAMBER

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

Registrar: Mr John Hocking

Decision of: 20 March 2013

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S MOTION FOR VARIATION OF TRIAL
CHAMBER DECISION ON THE FORM OF DISCLOSURE OF 4 JULY 2006**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

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”),

SEIZED of the Motion from the Office of the Prosecutor (“Prosecution”), filed on 19 February 2013 as a public document with public annexes (Annexes A and B) and confidential and *ex parte* annexes (Annexes C and D), in which the Prosecution seeks: (i) variance of the Decision of 4 July 2006 in which Trial Chamber I (“Chamber I”), which was seized of the file, charged the Prosecution, pursuant to Rule 66 (B) of the Rules of Procedure and Evidence (“Rules”), to disclose to Vojislav Šešelj (“Accused”) witness statements in its possession in which the name of the Accused is mentioned and, should the witnesses in question come under protective measures, to seek authorisation from Chamber I to redact these statements or not to disclose them in their entirety,¹ and (ii) that it be relieved of its obligation to disclose the statements of 45 persons (“Statements”) that mention the name of the Accused and contain information that the Prosecution considers sensitive,²

CONSIDERING, more specifically, that according to the Prosecution, non-disclosure of the Statements is necessary because: (i) of the real risk that the Accused will disclose sensitive information that would pose a threat to security and could violate protective measures of the authors and the persons whose names appear in these Statements,³ (ii) of the fact that the Statements are not of an exculpatory nature,⁴ that more than half do not contain any relevant information⁵ and, consequently, the Accused would not suffer any prejudice by the non-disclosure of these Statements,⁶

¹ *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.

² “Prosecution’s Motion for Variation of Trial Chamber Decision on the Form of Disclosure of 4 July 2006”, 18 February 2013 (public with public Annexes A and B and confidential and *ex parte* Annexes C and D) (“Motion”), paras 1 and 3.

³ Motion, paras 3, 4, 7, 8 and 11.

⁴ Motion, paras 5 and 16.

⁵ Motion, paras 5, 9 and 15.

⁶ Motion, paras 5 and 16.

CONSIDERING that the Accused has not responded to the Motion within the time limit set out in Rule 126 *bis* of the Rules,⁷

NOTING the Decision of 4 July 2006 rendered by Chamber I,

CONSIDERING that, in the Decision of 18 October 2012,⁸ the Chamber ruled on the merit of the Prosecution's request for non-disclosure of three witness statements to the Accused,⁹

CONSIDERING that the Prosecution intends in the future to file new motions similar to the present Motion,¹⁰

CONSIDERING that the hearings in this case closed on 20 March 2012 and that the Chamber withdrew to deliberate in private, pursuant to Rule 87 (A) of the Rules,

CONSIDERING that despite the reasoning presented in the Motion and in Annex B with respect to the method of searching documents in which the name of the Accused is mentioned,¹¹ the Chamber recalls the warning set out in the Decision of 18 October 2012 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",¹²

CONSIDERING that the Chamber deems, as the guardian of the rights of the Accused,¹³ that he will not suffer prejudice if these Statements are not disclosed to him, insofar as (i) none of the 45 persons has been called to testify in the present case; (ii) the name of the Accused is only mentioned, in most cases, in connection with facts that do not come under the domain of *ratione temporis* and/or *ratione loci* in the Indictment; (iii) the name of the Accused appears, in other cases, only incidentally;

⁷ The Accused received the translation of the Motion into BCS on 25 February 2013 (*see* Procès-verbal of Reception filed on 27 February 2013) and therefore had until 11 March 2013 to respond.

⁸ "Decision on Prosecution's Request for Non-Disclosure of Three Witness Statements to the Accused", 18 October 2012 (public) ("Decision of 18 October 2012").

⁹ "Prosecution's Request for Non-Disclosure", 28 September 2012 (public with confidential and *ex parte* Annexes A to C) ("Prosecution's Request for Non-Disclosure of Three Witness Statements to the Accused").

¹⁰ Motion, note 4 and paras 10 and 18.

¹¹ Motion, Annex B (public).

¹² Decision of 18 October 2012, pp. 3 and 4.

¹³ Article 20 (1) of the Statute of the Tribunal.

(iv) as the hearings are closed and the Statements are not part of the case file, they cannot be used by any means against the Accused, which renders their disclosure superfluous,

CONSIDERING, moreover, that the Chamber considers that, even though the Decision of 4 July 2006 did not set a time limit, its reasons, namely the fact that the Accused was in a specific situation, representing himself, no longer have any grounds, considering that the investigation phase has ended and the hearings are closed, and that, consequently, the obligation stemming from this decision no longer needs to be applied,

CONSIDERING, consequently, that the Chamber deems, in view of the very late stage of the proceedings, that there is no longer any reason to apply the Decision of 4 July 2006 and that the rights of the Defence are not affected,

CONSIDERING that the Chamber firmly insists on the continued application of the provision of Rule 68 of the Rules, pursuant to which the Prosecution is obliged to disclose to the Accused at any stage of the proceedings any material which in the actual knowledge of the Prosecution may suggest or mitigate the guilt of the Accused or affect the credibility of Prosecution evidence,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 54 of the Rules,

CONSIDERS the Decision of 4 July 2006 null and void from the time the hearing closed,

DECLARES, consequently, the present Motion moot,

AND

RECALLS the continuous and permanent obligation of the Prosecution set out in Rule 68 of the Rules.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twentieth day of March 2013
At The Hague
The Netherlands

[Seal of the Tribunal]