



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: 3 August 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: 3 August 2011

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S SUPPLEMENT FILED ON 24 FEBRUARY
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 a supplement from the Office of the Prosecutor (“Prosecution”), filed publicly on 24 February 2011, whereby the Prosecution provided the Chamber, pursuant to the decision filed publicly by the Chamber on 23 December 2010 (“Decision of 23 December 2010”)¹ with supplementary evidence concerning the date and/or the source of several 65 *ter* documents admitted into evidence, subject to this information being provided subsequently (“Supplement”).²

II. PROCEDURAL BACKGROUND

2. On 17 May 2010, the Prosecution publicly filed a motion with annex, seeking the admission to the record in this case of 180 evidentiary exhibits tendered from the bar table and the addition of one exhibit to its 65 *ter* list (“Motion of 17 May 2010”).³

3. On 25 August 2010, the Prosecution filed a *corrigendum* to the Motion of 17 May 2010, wherein the Prosecution indicated that pagination errors occurred in the Motion of 17 May 2010 and that the *corrigendum* aimed to correct these (“*Corrigendum to the Motion of 17 May 2010*”).⁴

4. At the administrative hearing of 21 September 2010, Vojislav Šešelj (“Accused”) contested the Motion of 17 May 2010.⁵

5. In an e-mail dated 26 August 2010 sent by the Legal Officer in Chambers, the Chamber asked the Prosecution: (1) to set out the reasons why the Motion of 17 May 2010 was not filed earlier; (2) to indicate whether, for all the documents tendered for

¹ “Decision on Prosecution’s Second Motion for Admission of Evidence from the Bar Table and for an Amendment to the 65 *ter* Exhibit List”, public document with annex and partly dissenting opinion of Judge Lattanzi”, 23 December 2010.

² “Prosecution’s Supplement of Additional Evidence Related to Second Motion for Admission of Evidence from the Bar Table”, public document with annexes, 24 February 2011.

³ “Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public document with annex, filed on 17 May 2010 (“Motion of 17 May 2010”).

⁴ “Corrigendum to Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public document, 25 August 2010. The Chamber notes that these citation errors concerned 18 documents.

⁵ Decision of 23 December, 2010, para. 4, citing the Hearing of 21 September 2010, French transcript 16411-16412.

admission, the English translations available on *e-Court* were official translations of the Tribunal; (3) to provide additional information regarding selected portions of the books by the Accused: cover pages of books, publishers, dates of publication, pages concerned in the original BCS version; and (4) to provide additional evidence attesting that the stenographic transcriptions and minutes from the Serbian Parliament were official, certified minutes of the Serbian National Assembly.⁶

6. In a submission filed publicly on 17 September 2010, the Prosecution responded to the questions put by the Chamber (“Notice”).⁷

7. In a submission filed publicly on 22 October 2010, the Prosecution supplemented the responses previously given in the Notice.⁸

8. In the Decision of 23 December 2010, the Chamber, acting by a majority with Judge Lattanzi dissenting in part, partially granted the Motion, ordering the admission into evidence of 65 *ter* Documents 193, 202, 203, 320, 557, 653, 953, 954, 955, 956, 957, 983, 997, 1008, 1024, 1033, 1132, 1372, 1736, 1766, 1778, 1819, 1930, 1940, 1998, 2076, 2157, 2158, 2517, 6018, 6021 and 6066 “on condition that supplementary evidence be supplied to establish their respective dates and/or sources”.⁹ The Chamber also ordered that 65 *ter* Documents 88, 194, 1305 be “partly admitted into evidence on condition that supplementary evidence be supplied to their respective dates and/or sources”.¹⁰

9. On 21 January 2011, the Prosecution publicly filed a request for partial reconsideration of the Decision of 23 December 2010 (“Motion of 21 January 2011”), contesting the bar to admission of 65 *ter* Documents 795, 1098 and 6004.¹¹

⁶ The Chamber sought disclosure of all these materials within a time-limit of three weeks.

⁷ “Prosecution’s Notice of Response to Trial Chamber’s 26 August 2010 Inquiries”, public document, 17 September 2010.

⁸ “Supplement to Prosecution’s Notice of Response to Trial Chamber’s 26 August 2010 Inquiries”, public document, 22 October 2010.

⁹ Decision of 23 December 2010, para. 26, with Judge Lattanzi dissenting concerning the admission into evidence of 65 *ter* Documents 653, 997, 1024, 1132, 1766, 1998 and 2158.

¹⁰ Decision of 23 December 2010, para. 29, with Judge Lattanzi dissenting concerning the admission into evidence of 65 *ter* Document 1305.

¹¹ “Prosecution’s Motion for Partial Reconsideration of the 23 December 2010 Decision on Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public document, 21 January 2011. The Chamber recalls that, subsequent to this submission, the Prosecution filed a supplement entitled: “Prosecution’s Supplement to Motion for Partial Reconsideration of the 23

10. On 24 February 2011, the Prosecution publicly filed the Supplement, providing the Chamber with the information concerning the date and/or the source of 35 *65ter* Documents referred to in paragraph 8 of this Decision and admitted to the record by the Chamber on 23 December 2010, either in whole or in part, subject to this information being provided at a later date.¹²

11. In a decision filed publicly on 16 March 2011, the Chamber granted the Motion of 21 January 2011 and ordered the admission to the record of the three documents barred by the Decision of 23 December 2010 (“Decision of 16 March 2011”).¹³

12. The Accused did not respond to the Supplement within the time-limit of 14 days from receipt of the BCS version, as required by Rule 126 *bis* of the Rules of Procedure and Evidence (“Rules”).¹⁴

III. ARGUMENTS BY THE PROSECUTION

13. In support of its Supplement, the Prosecution attaches two annexes: Annex A, containing a CD with the scanned versions of the additional documents concerning the date and/or the source of the documents (“Annex A”); and Annex B, reproducing in a chart the documents’ *65 ter* numbers, their description as well as further evidence concerning their date and/or source (“Annex B”).

14. As regards more specifically the three videos assigned *65 ter* numbers 6018, 6021 and 6066, the Prosecution indicates that a number of selected portions of these same videos have already been admitted to the record by the Chamber, that they are listed in Annex B and that the Prosecution had already provided information on the provenance and date of these selected portions when requesting their admission into

December 2010 Decision on Prosecution’s Second Motion for Admission of Evidence from the Bar Table”, public document with confidential annex, 4 February 2011.

¹² Supplement, paras 2-3. The Chamber points out that the scanned versions of *65 ter* Documents 1930 and 2157, disclosed by the Prosecution in Annex A, are barely legible; at the request of the Legal Officer in Chambers, the Prosecution informally disclosed freshly scanned versions of these documents by means of a new CD and e-mail, showing the information clearly and legibly.

¹³ “Decision on Prosecution’s Motion for Reconsideration of the Decision on the Second Bar Table Motion Filed 23 December 2010”, public document, 16 March 2011.

¹⁴ The Accused received the BCS version of the Supplement on 22 March 2011 (see Procès-verbal of reception filed on 29 March 2011) and had until 5 April 2011 to respond.

evidence.¹⁵ In addition to this, the Prosecution claims that it applied, through submissions contained in its Motion of 21 January 2011, for reconsideration of the Decision of 23 December 2010 insofar as it concerned 65 *ter* Documents 6021 and 6066.¹⁶

IV. APPLICABLE LAW

15. Under Rule 89 (C) of the Rules, a Chamber may admit any relevant evidence it deems to have probative value.¹⁷ Furthermore, a Chamber may, pursuant to Rule 89 (D) of the Rules, exclude any evidence if its probative value is substantially outweighed by the need to ensure a fair trial. Moreover, the Chamber recalls that, although evidence must be reliable to be probative, it is sufficient to establish its *prima facie* reliability.¹⁸ As regards the requirement of relevance, the moving party must be able to demonstrate with clarity and specificity, how each document fits into its case.¹⁹

16. The Chamber also reminds the parties that there is a fundamental distinction to be drawn between the admissibility of evidence and the weight that will be given to it at the close of the trial.²⁰ At the current stage of the proceedings, the Chamber recalls that it makes no final assessment of the relevance, reliability or probative value of the evidence in question. That determination will only be made at the end of the trial, in light of all of the evidence adduced by both parties, Prosecution and Defence.

V. DISCUSSION

17. As a preliminary matter, concerning the Prosecution's claim that it applied, in the Motion of 21 January 2011, for partial reconsideration of the Decision of 23 December 2010 for 65 *ter* Documents 6021 and 6066,²¹ the Chamber notes that the Prosecution did in fact apply, in the Motion of 21 January 2011, for partial

¹⁵ Supplement, para. 3. The Chamber notes that the Prosecution did not specify the date of that request for admission into evidence, but the Chamber infers that it is the Motion of 17 May 2010.

¹⁶ Supplement, para. 3, footnote 3.

¹⁷ *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, "Decision on Prosecution Motion to Admit Documents in Evidence", public document, 9 May 2008, para. 8.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ "Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial", public document, 15 November 2007, Annex, para. 2.

reconsideration of the Decision of 23 December 2010, but that this request pertained to 65 *ter* Documents 795, 1098 and 6004, not to 65 *ter* Documents 6021 and 6066.²² The Chamber also holds that this claim lacks relevance, inasmuch as 65 *ter* Documents 6021 and 6066 were not barred from admission in the Decision of 23 December 2010, but were admitted to the record subject to the provision of additional evidence making it possible to date them and/or ascertain their source.²³ In any event, the Chamber recalls that in its Decision of 16 March 2011, it granted the Motion of 21 January 2011 and ordered the admission into evidence of 65 *ter* Documents 795, 1098 and 6004.²⁴

18. At the same time, the Chamber noted that a number of 65 *ter* documents available on *e*-Court also contain items whose admission into evidence was not requested by the Prosecution in its Motion of 17 May 2010: in this way, when the Chamber confirms the admission into evidence of a 65 *ter* document in this Decision, it will simultaneously order the Prosecution to upload in *e*-Court only the document whose admission into evidence was requested, clearly marking, both in the original BCS version and in its English translation, the date and the source of the document.

A. Documents for Which the Prosecution Provided Satisfactory Additional Evidence Ascertaining the Document's Date and/or Source

1. Documents for which the Chamber Ordered Admission into Evidence Subject to the Provision of Unambiguous Proof of Date²⁵

19. **For the newspaper articles**, the Chamber points out that, in Annex A, the Prosecution provides duly dated, scanned copies of the newspapers in their original BCS version, which include articles whose admission into evidence was requested by the Prosecution. The Chamber, acting by a majority with Judge Lattanzi partially dissenting,²⁶ therefore removes the provisos set in the Decision of 23 December 2010

²¹ Supplement, para. 3, footnote 3.

²² Motion of 21 January 2011, para. 1.

²³ Decision of 23 December 2010, para. 26.

²⁴ Decision of 16 March 2011, para. 46.

²⁵ These are newspaper articles included in the following 65 *ter* documents: 88, 202, 203, 320, 557, 953, 954, 955, 956, 957, 1033, 1766, 1930 and 2157, and video recordings included in the following 65 *ter* Documents: 6018, 6021 and 6066.

²⁶ Judge Lattanzi dissents as to the admission into evidence of 65 *ter* Document 1766; see also Decision of 23 December 2010, para. 26.

relating to the admission into evidence of the following *65 ter* Documents: 88 (P 1322), 202 (P 1269), 203 (P 1270), 320 (P 1277), 557 (P 1283), 953 (P 1323), 954 (P 1289), 955 (P 1320), 956 (P 1290), 957 (P 1291), 1033 (P 1296), 1766 (P 1303), 1930 (P 1311), and 2157 (P 1319).

20. **For the video recordings**, the Chamber points out that the Prosecution, in its Supplement, provided additional information concerning the dates of the recordings it sought to have admitted into evidence. The Chamber therefore removes the provisos set by the Decision of 23 December 2010 in relation to the admission into evidence of the following *65 ter* documents: 6018 (P 1254), 6021 (P 1340) and 6066 (P 644).

2. Document for Which the Chamber Ordered Admission into Evidence Subject to the Provision of Unambiguous Proof of Source²⁷

21. The Chamber points out that, in Annex A, the Prosecution provides a scanned copy of the original BCS version of the newspaper, which includes the article whose admission into evidence was requested by the Prosecution. The Chamber, by a majority with Judge Lattanzi dissenting,²⁸ therefore removes the provisos concerning the admission into evidence of *65 ter* Document 1998 (P 1314) set by the Decision of 23 December 2010.

3. Documents for Which the Chamber Ordered Admission into Evidence Subject to the Provision of Unambiguous Proof of their Date and/or Source²⁹

22. The Chamber points out that in Annex A, the Prosecution provides duly dated scanned copies of the newspapers in their original BCS version, which include the articles whose admission into evidence was requested by the Prosecution. The Chamber, acting by a majority with Judge Lattanzi partially dissenting,³⁰ therefore removes the provisos set by the Decision of 23 December 2010 relating to the admission into evidence of the following *65 ter* documents: 193 (P 1267), 194 (P

²⁷ This is a drawing included in *65 ter* Document 1998.

²⁸ Judge Lattanzi dissents as to the admission into evidence of *65 ter* Document 1998; see also the Decision of 23 December 2010, para. 26.

²⁹ These are newspaper articles contained in the following *65 ter* Documents: 193, 194, 653, 983, 997, 1008, 1024, 1132, 1305, 1372, 1736, 1778, 1819, 1940 and 2076.

³⁰ Judge Lattanzi dissents as to the admission into evidence of *65 ter* Documents 653, 997, 1024, 1132 and 1305; see also the Decision of 23 December 2010, paras 26 and 29.

1268), 653 (P 1285), 983 (P 1292), 997 (P 1293), 1008 (P 1294), 1024 (P 1295), 1132 (P 1299), 1305 (P 1300), 1372 (P 1200), 1736 (P 1302), 1778 (P 1304), 1819 (P 1306), 1940 (P 1312) and 2076 (P 1318).

B. Documents for Which the Prosecution Has Not Provided Satisfactory Additional Evidence Attesting Unambiguously to the Date and/or Source of the Document

1. 65 *ter* Document 2158 (P 1328)

23. In the Decision of 23 December 2010, the Chamber had asked the Prosecution to provide additional information concerning the date and the source of 65 *ter* Document 2158 which is, according to the Prosecution, a catalogue from the “FBIS”.³¹

24. The Chamber points out that in its Annex B, the Prosecution explains that “FBIS” means “Foreign Broadcast Information Service” without specifying either the source or the date of the catalogue, but simply providing the Chamber, as Annex A, with the scanned copy of the original article from the newspaper *Borba*, dated 13 September 1991, which has no relevance to 65 *ter* Document 2158.

25. The Chamber, finding that the Prosecution has not met the requirement set by the Decision of 23 December 2010, will therefore not remove the provisos set by the Decision of 23 December 2010 and bars 65 *ter* Document 2158 from admission to the record.

³¹ Decision of 23 December 2010, para. 26. See also Motion of 17 May 2010, Annex A, p. 70, in which the Prosecution had requested the admission into evidence of a document entitled “Catalogue of the FBIS Information”, comprising summaries of newspaper articles and dated 27 February 1996, according to the Prosecution. The Chamber notes that the Prosecution cited, in the “Relevance” section of the Annex to the Motion of 17 May 2010, two articles from that catalogue, one from the newspaper *Le Monde* dated 16 June 1992, and the other from the newspaper *Borba* dated 13 September 1991, but without explicitly requesting admission into evidence of these two articles.

2. 65 ter Document 2517 (P 1329)

26. In the Decision of 23 December 2010, the Chamber ordered the admission into evidence of 65 *ter* Document 2517, subject to the tendering of unambiguous proof of its date.³²

27. The Chamber points out that in Annex A, the Prosecution supplied an internal *memorandum* from the Prosecution dated 15 July 2005, which includes an undated 65 *ter* Document 2517. The Chamber notes therefore that the Prosecution has not tendered unambiguous proof of the date of 65 *ter* Document 2517.

28. The Chamber, finding that the Prosecution has not met the requirement set by the Decision of 23 December 2010, will therefore not remove the provisos set by the Decision of 23 December 2010 and bars 65 *ter* Document 2517 from admission to the record.

VI. DISPOSITION

29. **FOR THE FOREGOING REASONS** and pursuant to Rules 54 and 89 (C) of the Rules,

REMOVES, by a majority with Judge Lattanzi partially dissenting, the provisos set by the Decision of 23 December 2010 relating to the admission into evidence of the documents assigned the following 65 *ter* numbers: 88 (P 1322), 193 (P 1267), 194 (P 1268), 202 (P 1269), 203 (P 1270), 320 (P 1277), 557 (P 1283), 653 (P 1285) 953 (P 1323), 954 (P 1289), 955 (P1320), 956 (P 1290), 957 (P 1291), 983 (P 1292), 997 (P 1293), 1008 (P 1294), 1024 (P 1295), 1033 (P 1296), 1132 (P 1299), 1305 (P 1300), 1372 (P 1200), 1736 (P 1302), 1766 (P 1303), 1778 (P 1304), 1819 (P 1306), 1930 (P 1311), 1940 (P 1312), 1998 (P 1314), 2076 (P 1318), 2157 (P 1319), 6018 (P 1254), 6021 (P 1340), 6066 (P 644).

CONFIRMS, by a majority with Judge Lattanzi partially dissenting, the admission into evidence of these 33 65 *ter* documents referred to *supra*,

³² Decision of 23 December 2010, para. 26. See also the Motion of 17 May 2010, Annex A, p. 70, in which the Prosecution requested admission into evidence for a document entitled "Population Exchange: Vojvodina Croats for Serbs from Croatia", dated 1993 according to the Prosecution.

ORDERS the Prosecution to upload in the *e*-Court system the original BCS versions of these 33 65 *ter* documents referred to *supra* and provided by the Prosecution to the Chamber in Annex A or on an informal basis,³³ clearly marking their date and source.

ORDERS the Registry to upload in the *e*-Court system the official English translations of the 33 exhibits referred to *supra*, clearly marking their date and source.

DENIES admission into evidence for 65 *ter* Documents 2158 (P 1328) and 2517 (P 1329).

Judge Lattanzi dissents concerning the admission into evidence of the following 65 *ter* documents: 653, 997, 1024, 1132, 1305, 1766 and 1998.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Dated this third day of August 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

³³ See *supra* footnote 12.