



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
IT-04-75-PT
Date: 27 June 2012
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: 27 June 2012

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON GORAN HADŽIĆ'S REQUEST FOR ACCESS TO PUBLIC
MATERIALS RELATED TO CROATIA IN ŠEŠELJ CASE (IT-03-67)**

The Office of the Prosecutor

Mr Mathias Marcussen
Mr Douglas Stringer

The Accused

Mr Vojislav Šešelj

Counsel for Goran Hadžić

Mr Zoran Živanović
Mr Christopher Gosnell

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 request filed as a public document on 15 June 2012 on behalf of Goran Hadžić (“Applicant”), charged in Case No. IT-04-75, *The Prosecutor v. Goran Hadžić* (“*Hadžić Case*”), seeking access to all public material related to events occurring in Croatia between 1991 and 1993 in the file of the present case and, in particular, all public material disclosed pursuant to Rules 66 (A) and 66 (B) of the Rules of Procedure and Evidence of the Tribunal (“Rules”), as well as all public exhibits that are not available on the judicial database of the Tribunal (“Request”),¹

NOTING the Decision of 18 September 2008 in which the Chamber decided that the public should not have access to exhibits that were admitted into evidence, including as public documents in the present case before the judgement is rendered and that the ruling on all requests for access to these exhibits should, therefore, be stayed until the end of the trial, with the exception of requests from those accused before the Tribunal, or from national courts, who may need them for the preparation of their defence,²

CONSIDERING that, at the hearing of 30 March 2010, Vojislav Šešelj (“Accused”) indicated to the Chamber that, in principle, he did not oppose the disclosure of documents related to the present case when it is sought by the Defence of other persons accused before the Tribunal,³

NOTING the Response of the Office of the Prosecutor (“Prosecution”), filed as a public document on 26 June 2012, in which the Prosecution indicates that it supports, in part, the present request relating to access to all exhibits admitted as public

¹ “Goran Hadžić’s Request for Access to All Public Materials in *Prosecutor v. Vojislav Šešelj* Related to Croatia”, 15 June 2012 (public) (“Request”).

² “Decision Regarding Public Access to Trial Exhibits”, 18 September 2008 (public) (“Decision of 18 September 2008”), pp. 1 and 2.

³ Questions regarding procedure, “T(E)” of 30 March 2010, p. 15862. The Accused received the BCS translation of the Request of 18 June 2012 (*see Procès-verbal* of Reception filed on 20 June 2012) and has, therefore, until 2 July 2012 to respond. However, in view of the above principle he adopted and considering that the present decision is not likely to cause him any prejudice, the Chamber does not deem it necessary, when dealing with the present Request, to wait for the expiry of the deadline for the response the Accused, as set out in Rule 126 *bis* of the Rules.

documents in the present case, but opposes granting access to documents disclosed to the Accused pursuant to Rules 66 (A) and 66 (B) of the Rules, maintaining that this request for disclosure is not a matter for the Chamber,⁴

NOTING the Decision of 13 March 2012, in which the Chamber authorised the Applicant, in accordance with the conditions set out in this Decision, to examine all confidential material filed *inter partes* in the present case relating to events occurring in Croatia between 1991 and 1993, in particular the transcripts of testimony heard in closed session and private session, confidential exhibits, confidential submissions of the parties and confidential decisions in the case file,⁵

CONSIDERING that to the extent that the present Request expressly falls under the special case of persons accused before the Tribunal who may seek access to documents⁶ and that the Chamber has already granted the Applicant access to confidential material relating to events occurring in Croatia between 1991 and 1993 on the ground that there was a “good chance” that this material could help the Applicant in the preparation of his defence,⁷ it does not see any reason that may lead it to deny access to the public material in the present case file,

CONSIDERING that certain documents disclosed by the Prosecution to the Accused pursuant to Rules 66 (A) and 66 (B) of the Rules were sent to him directly without being admitted into the file and that, consequently, they cannot be disclosed to the Applicant in the present decision,

CONSIDERING that it is for the Chamber seized of the *Hadžić* Case to ensure that the Prosecution fulfils its obligations *vis-à-vis* the Applicant pursuant, notably, to Rule 66 of the Rules,

⁴ “Prosecution’s Response to Goran Hadžić’s Request for Access to All Public Materials in *Prosecutor v. Vojislav Šešelj* Related to Croatia”, 26 June 2012 (public) (“Response”), paras 1 to 4.

⁵ “Decision on Motion of Goran Hadžić Seeking Access to Confidential Material Related to Croatia in *Šešelj* Case (IT-03-67)”, 13 March 2012 (public) with a separate opinion of Presiding Judge Jean-Claude Antonetti in the public annex (“Decision of 13 March 2012”), para. 28.

⁶ Decision of 18 September 2008, p. 1.

⁷ Decision of 13 March 2012, para. 19; *cf.* “Decision on the Request of Jovica Stanišić for Public Trial Exhibits in the *Šešelj* Case (IT-03-67)”, 27 October 2010 (public), p. 2.

FOR THE FOREGOING REASONS

PURSUANT TO Articles 21 (2) and 21 (4) (b) of the Statute of the Tribunal and Rules 54 and 73 of the Rules,

GRANTS IN PART the request and **AUTHORISES** the Applicant to examine all public material – in particular public documents disclosed pursuant to Rules 66 (A) and 66 (B) of the Rules, so long as they form part of the file in the sense of Article 10.1 of the “Directive for the Court Management and Support Services Section [of the] Judicial Support Services [of the] Registry”⁸ and the exhibits admitted as public documents – from the present case and relating to events occurring in Croatia between 1991 and 1993,

ORDERS the Prosecution to inform the Registry by 30 July 2012 at the latest of the public material relating to events occurring in Croatia between 1991 and 1993 that are part of the file in the present case,

REQUESTS that the Registry disclose to the Applicant documents identified in this way,

ORDERS the Applicant, his counsel and all other associates who have been authorised to examine the said material to refrain from disclosing or revealing its content, in its entirety or in part, to a third party until the end of the trial and subject to any later decisions concerning the possible changes to the public nature of the said material,⁹

DENIES the Request in all other respects.

⁸ IT/121/REV.2, 19 January 2011.

⁹ Should the material in question be disclosed to a third party for the purposes of the preparation of the Applicant’s defence, with the Chamber’s approval, any person who receives it must be informed by the Applicant or his Counsel that they are not permitted to copy, reproduce or make public, in its entirety or in part, any confidential information, or to disclose it to any other person. Moreover, if a person receives one of these documents, he must return it to the Applicant, his Counsel or any other person approved by them, as soon as he no longer needs it for the preparation of his defence. With reference to this paragraph, third parties exclude: (i) the Applicant; (ii) his Counsel; (iii) any associate who has been approved by the Counsel to examine the confidential material; and (iv) Tribunal staff, including members of the Prosecution. If the Applicant’s Counsel or a member of the Defence team allowed to examine the confidential material withdraws from the *Hadžić* Case, he will return to the Registry all confidential material that was sent to him in accordance with this decision.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-seventh day of June 2012
At The Hague
The Netherlands

[Seal of the Tribunal]