



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 September 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Order of: 3 September 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**ORDER ON VOJISLAV ŠEŠELJ'S MOTIONS FOR DISCLOSURE OF
DOCUMENTS BY THE PROSECUTION WITH THE SEPARATE OPINION
FROM PRESIDING JUDGE ANTONETTI IN ANNEXED THERETO**

The Office of the Prosecutor

Ms 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 three motions by Vojislav Šešelj (“Accused”): an oral motion presented during the administrative hearing of 19 January 2010 (“Oral Motion of 19 January 2010”),¹ requesting the disclosure of any information relating to possible contacts and negotiations between the Office of the Prosecutor (“Prosecution”) and Željko Ražnjatović known as “Arkan”, and between the Prosecution and Tomislav Nikolić, the former head of the Accused’s defence team; a written submission submitted on 15 March 2010 and filed publicly on 18 March 2010 (“Written Submission”),² again requesting the disclosure of any information relating to contacts between the Prosecution and Tomislav Nikolić; an oral motion submitted during the administrative hearing of 14 June 2010 (“Oral Motion of 14 June 2010”),³ in which the Accused indicated that exculpatory documents had not been disclosed to him by the Prosecution pursuant to Rule 68 (i) of the Rules of Procedure and Evidence (“Rules”).

II. PROCEDURAL BACKGROUND

2. In the Oral Motion of 19 January 2010, the Accused requested that the Chamber order the Prosecution to disclose to him all information relating both to possible contacts or negotiations between the Prosecution and Željko Ražnjatović known as “Arkan” (“Arkan”),⁴ and to contacts between the Prosecution, namely

¹ Hearing of 19 January 2010, T(F), pp. 15061-15073; T. 19 January 2010, pp. 15072-15074. The Chamber noted differences in interpretation between the French transcript quoting Borislav Pelević and the English transcript quoting Tomislav Nikolić. Therefore, the Chamber will also quote the English transcript when there is a divergence between the French transcript and the English transcript.

² English translation of BCS original titled “Submission no. 48: Request of Professor Vojislav Šešelj for Information about any Interview conducted by Representatives of the Office of the Prosecutor with Tomislav Nikolić, Former Leader of the Team Assisting the Defence of Dr Vojislav Šešelj”, public, submitted on 15 March 2010 and filed on 18 March 2010 (“Written Submission”).

³ Hearing of 14 June 2010, T(F), pp. 16138-16142.

⁴ Hearing of 19 January 2010, T(F), pp. 15061-15062, 15064, 15066.

David Tolbert and Carla Del Ponte, and the former head of his defence team, Tomislav Nikolić.⁵

3. During the same hearing, the Prosecution responded orally to the Motion (“Oral Response of 19 January 2010”).⁶

4. In the Written Submission filed publicly on 18 March 2010, the Accused reiterated his request concerning possible contacts between the Prosecution, namely David Tolbert and Carla Del Ponte, and Tomislav Nikolić, about which the Accused had no knowledge.

5. At the administrative hearing of 30 March 2010, the Prosecution responded orally to the Written Submission (“Oral Response of 30 March 2010”).⁷

6. During the same hearing, the Accused submitted an oral reply (“Reply”).⁸

7. In the Written Response filed publicly on 1 April 2010, supplemented by a Corrigendum filed that same day, of which the Accused received the translation into BCS on 12 April 2010 and 9 June 2010 respectively, the Prosecution requested that the Motion be denied (“Written Response”).⁹

8. In the Oral Request of 14 June 2010, the Accused indicated to the Chamber that on his own he had obtained documents concerning Arkan which he considered exculpatory and which the Prosecution, pursuant to Rule 68 (i) of the Rules, had not disclosed to him.¹⁰

⁵ Hearing of 19 January 2010, T(F), pp. 15072-15073; T, 19 January 2010, pp. 15072-15073.

⁶ Hearing of 19 January 2010, T(F), pp. 15062-15063, 15072-15091. The Chamber notes that the Prosecution responded only to the motion regarding Arkan.

⁷ Hearing of 30 March 2010, T(F), pp. 15862-15868.

⁸ Hearing of 30 March 2010, T(F), pp. 15862-15872.

⁹ “Prosecution’s Response to the Accused’s Motion Pursuant to Rule 66 (B) for Alleged Prosecution Interview with Tomislav Nikolić”, public, 1 April 2010, and “Corrigendum to Prosecution’s Response to the Accused’s Motion Pursuant to Rule 66 (B) for Alleged Prosecution Interviews with Tomislav Nikolić”, public, 1 April 2010 (“Written Response”).

¹⁰ The Chamber notes that the Accused’s motion lacks precision: the Accused is not expressly requesting the disclosure of documents already in his possession, nor is he expressly requesting that the Chamber sanction the Prosecution for violating the provisions of Rule 68 of the Rules.

9. During the same hearing, the Prosecution responded orally to the Motion (“Oral Response of 14 June 2010”).¹¹

¹¹ Hearing of 14 June 2010, T(F), p. 16141; T, 14 June 2010, pp. 16140-16141.

III. ARGUMENTS OF THE PARTIES

A. Oral Motion of 19 January 2010

10. In its Oral Motion of 19 January 2010, the Accused first indicated having learned through a Croatian television broadcast that negotiations between Arkan and the “Hague Tribunal” had taken place in late 1999.¹² The Accused requested the disclosure of any information on this issue, recalling that, according to the Indictment, Arkan is an alleged member of the Joint Criminal Enterprise and that any document relating to Arkan must therefore be disclosed to him.¹³

11. Secondly, the Accused indicated that he learned that members of the Prosecution and the former head of his defence team, Tomislav Nikolić, allegedly met on several occasions, and that Tomislav Nikolić allegedly met with David Tolbert in Budapest and with Carla Del Ponte during the Parliamentary Assembly of the Council of Europe in 2007.¹⁴ The Accused requested disclosure of any information relating to those meetings.¹⁵

B. Oral Response of 19 January 2010

12. In its Oral Response of 19 January 2010, without formally denying that such contacts with Arkan had in fact taken place, the Prosecution, asserted that it had met its disclosure obligations under Rules 66 (A), 66 (B) and 68 of the Rules, whilst specifying nonetheless that it is not required to disclose what contacts it had had during their investigations.¹⁶

¹² Hearing of 19 January 2010, T(F) p. 15061 (Broadcast titled “TV Calendar”, dated 15 January 2010). The Accused specifies that the words spoken during this broadcast were “Hague Tribunal”, but says that he assumes that this actually refers to the Office of the Prosecutor. Furthermore, the Accused points out that a week before his testimony, Borislav Pelević, Arkan’s deputy, gave a statement to the Serb media that he was at Arkan’s side in Zvornik and Bijeljina, and that in 2008 he became a member of the Serb Radical Party with the assistance of Tomislav Nikolić, and later helped Nikolić during his attempted coup d’état (Hearing of 19 January 2010, T(F), pp. 15066, 15069, 15072).

¹³ Hearing of 19 January 2010, T(F). pp. 15061-15062, 15064, 15066.

¹⁴ Hearing of 19 January 2010, T(F). pp. 15072-15073; T, 19 January 2010, pp. 15072-15073.

¹⁵ *Ibidem*.

¹⁶ Hearing of 19 January 2010 T(F), pp. 15062-15063.

B. Written Submission

13. In a Written Submission, the Accused claimed that according to reliable sources in Belgrade, contacts were established between the Prosecution and Tomislav Nikolić, the then head of his Defence team, and that he was not informed of those contacts.¹⁷ Invoking a breach of the principle of equality of arms and his right to a fair trial, the Accused argued that if such contacts did indeed take place, they would be crucial for the future conduct of his Defence.¹⁸

14. Accordingly, the Accused requested that the Chamber, pursuant to Rules 54, 66 (B) and 70 (G) of the Rules, order the Prosecution to disclose to him detailed information on such contacts, any audio recordings made at the time and a precise description of the context in which these contacts supposedly took place.¹⁹

D. Oral Response of 30 March 2010 and the Accused's Reply

15. In its Oral Response of 30 March 2010, the Prosecution confirmed, first spontaneously and then in response to a question from the Chamber, that it had never met with Tomislav Nikolić.²⁰

16. During that same hearing, the Accused discussed several facts in detail: for example, he stated that he never mentioned “interviews” but rather “meetings” as part of official functions, such as a meeting between David Tolbert and Tomislav Nikolić in Budapest, or a cordial conversation “on at least one occasion” in the presence of witnesses between Carla Del Ponte and Tomislav Nikolić in Brussels, or a meeting between Carla Del Ponte and Tomislav Nikolić in Strasbourg during a Parliamentary Assembly of the Council of Europe.²¹ The Accused submitted that after the meeting at the Council of Europe, Tomislav Nikolić requested that the trial commence as soon as possible even though the Accused himself was completely opposed to this.²²

¹⁷ Written Submission, paras 1-2. The Accused specified that he does not know the dates when these contacts supposedly took place.

¹⁸ Written Submission, paras 4-9, 11.

¹⁹ Written Submission, paras 3, 4, 10.

²⁰ Hearing of 30 March 2010, T(F), pp. 15862-15863.

²¹ Hearing of 30 March 2010, T(F), pp. 15866-15870.

²² Hearing of 30 March 2010, T(F), p. 15869.

Furthermore, although the Accused acknowledged that contacts may exist between the Prosecution and the Defence, he specified that such contacts must not take place without an accused's being aware of them, particularly when he is conducting his own defence.²³ The Accused therefore reiterated his request and asked for an official statement from David Tolbert and Carla Del Ponte, or any notes on this issue which the Prosecution may have.²⁴

17. In light of the details provided by the Accused during the hearing and at the Chamber's request, the Prosecution undertook to look into the matter again and asked the Accused to provide the date such a meeting supposedly took place.²⁵

E. The Written Response

18. In filings dated 1 April 2010 referring to the searches conducted since the hearing of 30 March 2010, the Prosecution requested that that the Written Submission be denied.²⁶

19. In support of its Motion, the Prosecution noted that at the hearing of 9 October 2008, the Accused mentioned that a meeting between David Tolbert and Tomislav Nikolić had taken place "to discuss the trial" but recalled that at the hearing of 15 October 2008, it had informed the Accused that David Tolbert had confirmed having no recollection of such a meeting.²⁷

20. Furthermore, the Prosecution contended that it had met all its disclosure obligation under Rules 66 and 68 of the Rules and recalled the criteria set out in the *Karamera et al.* case allowing the Chamber to intervene and order the disclosure of documents: therefore, it is incumbent on the Defence (i) to demonstrate that the material sought is in the custody or control of the Prosecution, (ii) to establish *prima*

²³ Hearing of 30 March 2010, T(F), p. 15870.

²⁴ Hearing of 30 March 2010, T(F), p. 15866. The Accused's motion relates solely to contacts that took place whilst Tomislav Nikolić was a member of his defence team. *See* regarding this issue the Hearing of 30 March 2010, T(F), p. 15868: "Mr. President, I'm absolutely not interested in the possible contacts between Tomislav Nikolić and The Hague Tribunal after our divorce. I'm absolutely not interested in that. They can talk about whatever they want to talk now."

²⁵ Hearing of 30 March 2010, T(F), pp. 15867-15868.

²⁶ Written Response, para. 5.

facie the materiality of the document sought to the preparation of the Defence case and (iii) to identify specifically the requested material.²⁸

21. Finally, the Prosecution stated that it had not identified any records of any meetings between Tomislav Nikolić and David Tolbert, or Carla Del Ponte during its search and deemed, furthermore, that the Accused had not shown that such information is in the custody or control of the Prosecution.²⁹

F. Oral Motion of 14 June 2010

22. In the Oral Motion of 14 June 2010, the Accused stated that he obtained the documents relating to Arkan on his own, documents which the Prosecution had never disclosed to him but had transmitted to other defence teams at the Tribunal. The Accused specified that these non-confidential documents, one of which is dated 7 January 1991, originate from the State Security Service of Serbia and bear the numbers 632, 992 and 1010.³⁰ According to the Accused, the documents obtained describe Arkan as an agent recruited in 1989 by the State Security Service of Montenegro, with the support of Bosnia, Croatia and Vojvodina, and that he was tasked with a propaganda mission as part of the rallies organised by Slobodan Milošević.³¹ The Accused pointed out that these documents, which he considers exculpatory, should have been disclosed to him by the Prosecution pursuant to Rule 68 (i) of the Rules and stated that he hoped the Chamber would render a decision on this issue.³²

²⁷ Written Response, paras 1-2.

²⁸ Written Response, para. 3, quoting *The Prosecutor v. Karamera et al.*, Case No. ICTR-98-44-AR73.11, “Decision on the Prosecution’s Interlocutory Appeal Concerning Disclosure Obligations”, 23 January 2008, para. 12.

²⁹ Written Response, paras 4-5.

³⁰ Hearing of 14 June 2010, T(F), 16139; T, 14 June 2010, pp. 16138-16139.

³¹ Hearing of 14 June 2010, T(F), 16139-16140; T, 14 June 2010, pp. 16141-16142.

³² Hearing of 14 June 2010, T(F), 16140; T, 14 June 2010, pp. 16140.

F. Oral Response of 14 June 2010

23. In its Oral Response of 14 June 2010, the Prosecution agreed to search for these documents but added that their content seemed more inculpatory than exculpatory inasmuch as they would confirm Arkan's participation in the Joint Criminal Enterprise.³³

24. The Prosecution confirmed moreover that it is unaware of any negotiations with Arkan as described by the Accused.³⁴

IV. APPLICABLE LAW

25. Article 21 (2) of the Statute of the Tribunal ("Statute") provides that any accused shall be entitled to a fair and public hearing, subject to Article 22 of the Statute.

26. According to Rule 66 (B) of the Rules, the Prosecutor shall, on request, permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's custody or control, which are material to the preparation of the evidence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

27. Rule 68 (i) of the Rules provides that, subject to the provisions of Rule 70, the Prosecutor shall, as soon as practicable, disclose to the Defence any material which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence.

28. It is therefore incumbent on the Prosecution to determine, on a case by case basis, what material falls under Rule 68 (i) of the Rules, in light of the Accused's right to a fair trial.³⁵

³³ Hearing of 14 June 2010, T(F), p. 16141.

³⁴ Hearing of 14 June 2010, T(F), p. 16141; T, 14 June 2010, p. 16141.

³⁵ *The Prosecutor v. Naser Orić*, Case No. IT-03-68-T, "Decision on Ongoing Complaints About Prosecutorial Non-Compliance with Rule 68 of the Rules", 13 December 2005, para. 20; *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement, 17 December 2004, para. 183; *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-A, Judgement, 19 April 2004, para. 180.

29. Under Rule 67 (D) of the Rules, if either party discovers additional evidence or material which should have been disclosed earlier pursuant to the Rules, that party shall immediately disclose that evidence or material to the other party and the Trial Chamber.

30. The Appeals Chamber also reiterated that the general practice of the Tribunal is to consider that the Prosecution executes its functions in good faith.³⁶

31. Nevertheless, Rule 68 of the Rules does not confer on an Accused the general right to consult the Prosecution's case file. Therefore, if an accused considers that there has been a violation of Rule 68, he must identify precisely the facts in question, establish a *prima facie* case of the exculpatory nature of these facts, and demonstrate that they are in the custody of the Prosecution.³⁷

32. The Appeals Chamber recently upheld that for a Chamber to be able to order the Prosecution to disclose evidence pursuant to Rules 66 and 68 of the Rules, it is incumbent on the Defence to bear the burden of proof and cumulatively (i) demonstrate that the material sought is in the custody or control of the Prosecution, (ii) establish *prima facie* the materiality of the document sought to the preparation of the defence case and (iii) specifically identify the requested material.³⁸

³⁶ *The Prosecutor v. Miroslav Bralo*, Case No. IT-95-17-A, "Decision on Motions for Access to Ex Parte Portions of the Record on Appeal and for Disclosure of Mitigating Material", 30 August 2006, para. 31.

³⁷ *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R68, "Decision on Motion for Disclosure", 4 March 2010, para. 14. See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, "*Décision sur les requêtes de Ferdinand Nahimana aux fins de divulgation d'éléments en possession du Procureur et nécessaires à la défense de l'appelant et aux fins d'assistance du Greffe pour accomplir des investigations complémentaires en phase d'appel*", 8 December 2006, para. 7.

³⁸ *Karamera et al v. The Prosecutor*, Case No. ICTR-98-44-AR73.18, "Decision on Joseph Nzirorera's Appeal from Decision on Alleged Rule 66 Violation", 17 May 2010, paras 12, 13 and 32, quoting *The Prosecutor v. Karamera et al.* Case No. ICTR-98-44-AR73.11, "Decision on the Prosecution's Interlocutory Appeal Concerning Disclosure Obligations", 23 January 2008, para. 12; *Jean de Dieu Kamuhanda v. The Prosecutor*, Case No. ICTR-99-54A-R68, "decision on Motion for Disclosure.", 4 March 2010, para. 14; *The Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-AR73, "Decision on Interlocutory Appeal Relating to Disclosure Under Rule 66 (B) of the Tribunal's Rules of Procedure and Evidence", 25 September 2006, paras 10-11; See also *Ferdinand Nahimana et al. v. The Prosecutor*, Case No. ICTR-99-52-A, "Decision on Prosecution's Motion for Leave to Call Rebuttal Material", 13 December 2006; *Ferdinand Nahimana et al. vs. The Prosecutor*, Case No. ICTR-99-52-A, "*Décision sur les requêtes de Ferdinand Nahimana aux fins de divulgation d'éléments en possession du Procureur et nécessaires à la défense de l'appelant et aux fins d'assistance du Greffe pour accomplir des investigations complémentaires en phase d'appel*", 8 December 2006.

V. DISCUSSION

A. On the Motions of the Accused for disclosure of information and/or documents concerning Arkan

33. The Chamber notes that in its Oral Response of 19 January 2010 the Prosecution indicated that it had complied with its disclosure obligations and was not required to reveal whom it had contacted during its investigation,³⁹ and, in its Oral Response of 14 June 2010 indicated that it was unaware of any negotiations with Arkan as described by the Accused.⁴⁰

34. Furthermore, the Chamber notes that the Accused merely reiterates that Arkan is an alleged member of the Joint Criminal Enterprise without demonstrating specifically how the existence of negotiations and documents relating thereto, whose very existence has not been confirmed, would be necessary for the preparation of his defence, would be used as evidence at trial pursuant to the provisions of Rule 66 (B) of the Rules, or would be exculpatory.

B. On the Motion of the Accused for disclosure of information and/or documents concerning contacts between the Prosecution and Tomislav Nikolić

35. With respect to the Accused's motion for disclosure of information and/or documents relating to contacts between the Prosecution and Tomislav Nikolić, the Chamber observes that the Prosecution contends that it had not found any evidence of meetings between Tomislav Nikolić and David Tolbert or Carla Del Ponte, and that the Accused has not shown that such information is in the Prosecution's custody or control.⁴¹

³⁹ Hearing of 19 January 2010, T(F), pp. 15062-15063.

⁴⁰ Hearing of 14 June 2010, T(F), p. 16141; T, 14 June 2010, p. 16141.

⁴¹ Written Response, paras 4-5.

36. The Chamber notes moreover that, according to the Accused, several people witnessed these contacts between the Prosecution and Tomislav Nikolić, and that Nikolić himself had also acknowledged the existence of these contacts.⁴²

37. However, at this stage the Chamber must observe the absence of any corroboration by a witness or any other concrete evidence in support of the Accused's motion confirming that such information is in the Prosecution's custody or control, and notes, furthermore, that the Prosecution had already provided David Tolbert's response on this issue at the hearing of 15 October 2008.⁴³

VI. DISPOSITION

38. **FOR THE FOREGOING REASONS**, pursuant to Articles 20 (1) and 21 of the Statute and Rules 54, 66 (B), 67 (D) and 68 (i) of the Rules, the Chamber

Presiding Judge Antonetti joining a separate opinion to this Decision,

ORDERS the joinder of the three Motions,

REJECTS the Motions.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this third day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴² Hearing of 30 March 2010, T(F), p. 15866; Hearing of 15 October 2008, T(F), p. 10802.

⁴³ Written Response, paras 1-2; hearing of 15 October 2008, T(F), p. 10802.

SEPARATE AND CONCURRING OPINION OF PRESIDING JUDGE JEAN-
CLAUDE ANTONETTI

I am in full agreement with the decision taken **unanimously** by the judges to reject the 3 Motions submitted by the Accused Vojislav Šešelj. Nevertheless, considering the importance of the Motion, I am obliged, personally, to make the following observations:

The Accused requested from the Chamber, and not the Prosecution, disclosure of all material relating to possible contacts between the Prosecution and **Željko Ražnjatović known as “Arkan”**,⁴⁴ and between the Prosecution and respected members of the Office of the Prosecutor, namely Mr David Tolbert and Ms Carla Del Ponte. In addition, he requested the disclosure of all material relating to contacts with the former head of his defence team and political right-hand man, **Mr Tomislav Nikolić**.

Pursuant to Rules 66 and 68 of the Rules, the Prosecution had the legal obligation to provide of its own accord, without being asked to do so, any relevant material concerning possible meetings or statements regarding the individual “Arkan”, who is a member of the alleged Joint Criminal Enterprise; likewise, it should have informed the Accused of all relevant information regarding any contacts between Tomislav Nikolić and members of the Prosecution since Mr Tomislav Nikolić was the person in charge of the Accused’s defence, as the latter himself recalled on 18 June 2008.⁴⁵

I have duly noted the fact that the Prosecution indicated that it had no evidence which would enable it to grant the Accused’s request.

Bearing in mind the Prosecution’s eminent role under the Statute of the Tribunal, it must be considered that its assertions have been made in good faith and, **at this stage**, I take formal note thereof.

⁴⁴ Željko Ražnjatović known as “Arkan” was assassinated on 15 January 2000 in Belgrade.

⁴⁵ At the hearing of 23 September 2008, it was specified that **Tomislav Nikolić was no longer a member of the Accused’s defence team**: Hearing of 23 September 2008, T(F), p. 9838. **Tomislav Nikolić left the SRS in 2008 and then, subsequently, the Accused’s defence team.**

If by some unlikely possibility “Arkan”, the person implicated who has himself been indicted,⁴⁶ had had meetings with the Office of the Prosecutor, whether these were formal meetings cemented by a statement or informal meetings, this needed to be disclosed.

If also by some unlikely possibility Ms Carla Del Ponte and her deputy at the time had contacts with Tomislav Nikolić, this should have been known by the Accused considering Mr Tomislav Nikolić’s defence functions. It would be inconceivable in any legal system for a lawyer to have meetings with the Prosecution behind his client’s back and without his client’s knowledge.

Admittedly, Mr Tomislav Nikolić is not a lawyer in this case, but since the Accused Vojislav Šešelj is defending himself, the members of his team have the status of “quasi-lawyers”. Why do they have this role of “quasi-lawyers”? Because it is their responsibility to collect evidence and to interview the Defence witnesses in view of their testimony before this Tribunal. As the Accused is detained in the Scheveningen prison, he is unable to do these tasks on his own.

It must be noted that the Accused bases his position on information disclosed to him about which, to date, he did not feel the need to inform the Chamber and the Prosecution and seems convinced that these contacts did take place.

Viewed otherwise, the Prosecution informed us solemnly that there had never been anything of the sort. Assuming that the Prosecution is acting in good faith, I am forced to reject the motion. However, should the Accused subsequently be able to provide us with concrete information, there will still be time for the judges to request any appropriate explanations from the Prosecution, which could, in that case, be subject to Rule 77 proceedings.

⁴⁶ The indictment against Željko Ražnjatović (Case No. IT-97-27) was signed on 23 September 1997 and filed on 26 September 1997. The proceedings concluded due to the death of the Accused prior to his transfer to the Tribunal in 2000.

I understand that the issue brought before the Chamber is extremely sensitive because the judges are caught between two versions: the version of the Accused, who appears to have sources substantiating his request, and the **assumed good faith version** of the Prosecution. In such a context, no reasonable judge can make a definitive finding. This is the reason why the term “**at this stage**” was used in the decision.

Any competent jurist knows that archives exist in every service, including the Office of the Prosecutor. Furthermore, **any competent jurist** knows that once the Tribunal has completed its work, these archives will be collected and managed by an ad hoc institution yet to be determined. Finally, **any competent jurist** knows that in the future, distinguished researchers will study how this Tribunal and the Office of the Prosecutor functioned by engaging in a thorough examination of all the internal documents relating to various subjects.

In this context, it is to be hoped that no future discovery will undermine the judges’ conviction, which is based on the good faith of the Office of the Prosecutor, because should this happen, International Justice will be the first **victim**.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this third day of September 2010
At The Hague
The Netherlands

[Seal of the Tribunal]