



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: 27 February 2008
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 27 February 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**REDACTED VERSION OF THE
SECOND DECISION ON THE PROSECUTION'S CONSOLIDATED
MOTION PURSUANT TO RULES 89 (F), 92 *BIS*, 92 *TER* AND 92 *QUATER*
OF THE RULES OF PROCEDURE AND EVIDENCE
FILED CONFIDENTIALLY ON 27 FEBRUARY 2008**

The Office of the Prosecutor

Mr Daryl Mundis

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 consolidated motion initially registered confidentially and *ex parte* by the Office of the Prosecutor (“Prosecution”) on 22 October 2007 (“Motion”),¹ in order to admit in writing a number of witness statements and transcript testimony, and related exhibits, concerning 64 witnesses pursuant to Rules 92 *ter* and 92 *quater* of the Rules of Procedure and Evidence of the Tribunal (“Rules”), with regard to which the Chamber already ruled in part in its Decision of 7 January 2008.²

II. PROCEDURAL BACKGROUND

2. In its Decision of 7 January 2008, the Chamber:

- dismissed the Prosecution's request to admit written statements in connection with the following witnesses: VS-011, VS-015, VS-017, VS-050, VS-035, VS-053, VS-054, VS-1060, [redacted] (VS-1133), [redacted] (VS-1135), [redacted] (VS-1136), VS-1141, [redacted] (VS-1055), [redacted] (VS-1056) and Šefkija Smailović (VS-1020);

- dismissed the Prosecution request to admit transcript testimony in other cases for the following witnesses: VS-004, Milan Babić (VS-043), VS-012, VS-013, VS-026, VS-027, VS-1120, VS-002, VS-016, VS-020, VS-021, VS-022, VS-045, VS-051, [redacted] (VS-1126), VS-007, [redacted] (VS-1127), [redacted] (VS-1128), [redacted] (VS-1129), [redacted] (VS-1000), [redacted]³ (VS-1007), VS-037, VS-1012, VS-1062, VS-1064, VS-1065, VS-1087, VS-1093, [redacted] (VS-1033), VS-1022, VS-1035, VS-1111 and VS-036;

¹ Prosecution's Clarification of the Pending Motions for Admission of Statements pursuant to Rules 89 (F), 92 *bis*, 92 *ter* and 92 *quater*, confidential and *ex parte*, 22 October 2007 (“Motion”).

² Decision on the Prosecution's Consolidated Motion pursuant to Rules 89 (F), 92 *bis*, 92 *ter* and 92 *quater* of the Rules of Procedure and Evidence, 7 January 2008 (“Decision of 7 January 2008”).

³ The Chamber notes that the name of this witness was mentioned erroneously in paragraph 52 and in the disposition of the Decision of 7 January 2008: Witness VS-007 is actually called [redacted] and not [redacted].

- dismissed the request for admission regarding all the exhibits related to these statements and transcripts; and

- ordered the deferral of its ruling on the Motion in all other respects until the expiry of the time-limit for Vojislav Šešelj (“Accused”) to reply, which ran until 17 January 2008.⁴

3. Consequently, the Chamber has yet to rule on:

- the request to admit the written statements of the following witnesses: VS-018, VS-031, VS-1119, [redacted] (VS-1134), VS-1014, VS-1105, VS-1024, VS-1025, VS-1026, VS-1051, [redacted] (VS-1052), VS-1068 and VS-1069;

- the request to admit the transcript testimony in other cases of three witnesses that the Prosecution intends to call as expert witnesses, Ivan Grujić, Dravor Strinović and Ewa Tabeau.

4. The Accused responded to the Motion in Submission 380 submitted on 18 February 2008 and filed on 26 February 2008 (“Submission 380”).⁵

5. At this stage of the proceedings and in application of the Decision of 7 January 2008,⁶ the Chamber is still unable to rule on the request to admit the transcript testimony in other cases of witnesses Ivan Grujić, Dravor Strinović and Ewa Tabeau since it has not ruled on their status as experts.

6. The subject of the present decision is therefore solely to rule on the request to admit the written statements of the following witnesses: VS-018, VS-031, VS-1119, [redacted] (VS-1134), VS-1014, VS-1105, VS-1024, VS-1025, VS-1026, VS-1051, [redacted] (VS-1052), VS-1068 and VS-1069.

⁴ For a detailed procedural background, see the Decision of 7 January 2008, pp. 1-4.

⁵ Submission 380, Professor Vojislav Šešelj’s Response to Prosecution’s Clarification for Admission of Statements Pursuant to Rules 89 (F), 92 *bis*, 92 *ter*, and 92 *quater*, submitted on 18 February 2008 and filed on 26 February 2008 (“Submission 380”).

⁶ See the Decision of 7 January 2008, para. 46.

III. ARGUMENTS OF THE PARTIES

1. Preliminary Observation

7. In the Decision of 7 January 2008, the Chamber considered that the Accused had until 17 January 2008 to respond to the Motion, since he only received the BCS copy of the Clarification of the Motion⁷ on 2 January 2008.⁸ Nevertheless, given that it was not until 4 February 2008 that the Accused received a BCS copy of the Third Prosecution Notice lifting the *ex parte* status of certain parts of Annex B to the Motion,⁹ Submission 30 should be taken into account, which was submitted by the Accused on 18 February 2008, i.e. within the time-limit of 14 days to submit responses to motions as provided by Rule 126 *bis* of the Rules.

2. Prosecution Requests

8. The Prosecution's arguments recalled in the Decision of 7 January 2008 remain unchanged.¹⁰

9. The Prosecution requests in particular the admission of:

- a written statement of 15 August 2006 by Witness VS-018;¹¹

- a written statement dated 16 June 2006 for Witness VS-031;¹²

⁷ Prosecution's Further Clarification of the Pending Motions for Admission of Statements Pursuant to Rules 89 (F), 92 *bis*, 92 *ter* and 92 *quater*, confidential, 31 October 2007 ("Clarification").

⁸ See the Decision of 7 January 2008, paras. 12 and 29.

⁹ On 20 November 2007, the Chamber ordered the Prosecution to lift the *ex parte* status of certain parts of Annex B not yet disclosed to the Accused [see Order on the Communication of Information Concerning Witnesses the Prosecution Intends to Call Pursuant to Rules 92 *ter* and *quater* of the Rules of Procedure and Evidence, confidential, 20 November 2007] concerning 14 witnesses not entitled to delayed disclosure of their identity to the Accused 30 days before their testimony [These 14 witnesses are the following: VS-004 (Annex B01), VS-012 (Annex B03), VS-015 (Annex B05), VS-017 (Annex B6), VS-026 (Annex B07), VS-027 (Annex B08), VS-031 (Annex B14), VS-050 (Annex B15), VS-002 (Annex B18), VS-016 (Annex B19), VS-35 (Annex B30), VS-1093 (Annex 49), VS-1024 (Annex B53), VS-1111 (Annex B64)]. The Prosecution carried this out on 22 November 2007 [Notice Regarding Prosecution's Clarification of the Pending Motions for Admission of Statements Pursuant to Rules 89 (F), 92 *bis*, 92 *ter* and 92 *quater*, confidential, 22 November 2007 ("Third Notice")]. See also the Procès-verbal of Reception by the Accused of this Third Notice, dated 4 February 2008, filed on 19 February 2008.

¹⁰ Decision of 7 January 2008, p.5.

¹¹ See Annex B13 of the Motion (VS-018): Prosecution reference number ("ERN") 0603-0802 to 0603-0814. It should be noted that unless otherwise mentioned, in the present decision the Chamber refers only to the ERN of documents provided in English. The Chamber notes that pages 0603-0811 to 0603-0814 of the statement of Witness VS-018 dated 15 August 2006 are missing.

- a written statement dated 6 September 2002 for Witness VS-1119;¹³
- a written statement dated 27 September 2002 for Witness [redacted] (VS-1134);¹⁴
- a written statement dated 13 and 14 July 1997 for Witness VS-1014;¹⁵
- a written statement dated 16, 20 and 21 September 1996 for Witness VS-1105;¹⁶
- a written statement dated 8 October 1998 for Witness VS-1024;¹⁷
- a “92 *bis* document”¹⁸ and two written statements dated 9 October 1998 and 24 April 2004¹⁹ for Witness VS-1025;
- a written statement dated 10 June 2004 for Witness VS-1026;²⁰
- a written statement dated 21 and 22 April 2004 for Witness VS-1051;²¹

¹² See Annex B14 of the Motion (VS-031): ERN 0601-2587 to 0601-2602.

¹³ See Annex B16 of the Motion (VS-1119): ERN 0326-0802 to 0326-0814. The Chamber notes that pages referenced 0326-0805 to 0326-0814 are missing and that the “statement” provided by the Prosecution is actually a 92 *bis* statement pursuant to Rule 92 *bis* (B) of the Rules whereby “a written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person’s knowledge and belief” and that it was taken as prescribed by this Rule. This 92 *bis* statement dated 6 September 2002 (ERN 0326-0802 to 0326-0804 and 0307-6028) has attached to it a written statement of Witness VS-1119 dated 12 February 2001, ERN 0200-8618 to 0200-8625 and a supplementary statement dated 6 September 2002 marked ERN 0307-6081.

¹⁴ See Annex B34 of the Motion (VS-1134): ERN 0189-8834 to 0189-8840.

¹⁵ See Annex B44 of the Motion (VS-1014): ERN 0051-2380 to 0051-2389.

¹⁶ See Annex B50 of the Motion (VS-1105): ERN 0043-7218 to 0043-7226.

¹⁷ See Annex B53 of the Motion (VS-1024): ERN 0064-3903 to 0064-3911.

¹⁸ See Annex B54 of the Motion (VS-1025): ERN 0357-8578 to 0357-8588. The Chamber notes that this “92 *bis* document”, to use the Prosecution’s expression, is a 92 *bis* declaration dated 16 June 2004 (ERN 0357-8578 to 0357-8581) to which is attached a written statement by the witness in BCS dated 24 April 2004 (ERN 0357-8582 to 0357-8588) which the Prosecution also requests for admission in its English version (*see infra* footnote 16).

¹⁹ See Annex B54 of the Motion (VS-1025): ERN 0064-3734 to 0064-3753 (the Chamber notes that the statement of 9 October 1998 is actually marked ERN 0064-3734 to 0064-3744 and that the documents in BCS attached to this statement are marked ERN 0064-3745 to 0064-3753) and ERN 0356-2387 to 0356-2392, respectively.

²⁰ See Annex B55 of the Motion (VS-1026): ERN 0357-8559 to 0357-8565. The Chamber notes that the statement of 10 June 2004 makes several references to a statement dated 23 May 1995 marked ERN ET 0216-8770 to 0216-8773, which the Prosecution does not request for admission.

²¹ See Annex B57 of the Motion (VS-1051): ERN 0356-2400 to 0356-2412.

- a written statement dated 24 and 25 April 2004²² and a “92 *bis* package” dated 25 April 2004²³ for Witness [redacted] (VS-1052);
- two written statements dated 18 March 1995 and 13 June 2004²⁴ and a “92 *bis* document” dated 1 April 2004²⁵ for Witness VS-1068;
- a written statement given “to local authorities” on 25 January 2001,²⁶ a written statement dated 11 June 2004²⁷ and a “92 *bis* package” for Witness VS-1069.²⁸

3. Response of the Accused

10. In Submission 380, the Accused reiterates his opposition to the admission of statements presented by the Prosecution pursuant to Rules 92 *ter* and 92 *quater*:

- using the example of the testimony of Goran Stoparić (VS-015) and Witness VS-004 to illustrate the very large difference between their written statements and their *viva voce* testimony before the Chamber;²⁹

²² See Annex B58 of the Motion (VS-1052): ERN 0356-2377 to 0356-2386.

²³ See Annex B58 of the Motion (VS-1052): ERN 0357-8589 to 0357-8601. The Chamber notes that this “92 *bis* package”, to use the Prosecution’s expression, includes a 92 *bis* declaration (ERN 0357-8589 to 0357-8590) dated 16 June 2004 (and not 25 April 2004, as indicated by the Prosecution) and that the referenced pages 0357-8591 to 0357-8601 have not been provided.

²⁴ See Annex B59 of the Motion (VS-1068): ERN ET RR04-7394 to RR04-7404 and ERN 0357-8609 to 0357-8616, respectively.

²⁵ See Annex B59 of the Motion (VS-1068): ERN 0363-1615 to 0363-1638. The Chamber notes that this is a 92 *bis* declaration (ERN 0363-1615 to 0363-1617) dated 1 November 2004 (and not 1 April 2004 as indicated by the Prosecution), to which statements in BCS by the witness are attached dated 13 June 2004 and 18 March 1995 (respectively ERN 0363-1619 to 0363-1627 and 0363-1628 to 0363-1638) with the English version provided separately for admission by the Prosecution; see footnote 21 *supra* indicating the ERN of the English versions of these statements).

²⁶ See Annex B60 of the Motion (VS-1069): ERN ET RR13-1734 to RR13-1737. The Chamber notes that this statement does not specify before which authority – name and headquarters of the authority – it was given.

²⁷ See Annex B60 of the Motion (VS-1069): ERN 0357-8552 to 0357-8558.

²⁸ See Annex B60 of the Motion (VS-1069): ERN 0363-1495 to 0363-1509. The Chamber notes that this is a 92 *bis* declaration (ERN 0363-1495 to 0363-1497) dated 1 November 2004 to which statements by the witness in BCS are attached dated 11 June 2004 and 25 January 2001 (respectively ERN 0363-1498 to 0363-1504 and 0363-1505 to 0363-1508), whose English version is provided separately by the Prosecution for admission; see footnotes 23 and 24 *supra* indicating the ERN of the English versions of these statements.

²⁹ Submission 380, pp. 4-5. See also, hearing of 29 January 2008, Court Transcript in French, 2855-2856.

- submitting that if the Chamber admits the written statements of the thirteen witnesses mentioned above,³⁰ he would not have the possibility to challenge them,³¹
- alleging finally that these written statements were for the most part obtained by duress and threats and that the only way to prove this is to have the witnesses appear *viva voce*.³²

IV. APPLICABLE LAW

11. Since the Decision of 7 January 2008 presented in detail the applicable law pursuant to Rule 92 *ter* of the Rules, the Chamber will not repeat it in this decision.³³

12. The Chamber nevertheless recalls that pursuant to Rule 92 *ter* of the Rules, the Trial Chamber has the *power* to admit, in whole or in part, written statements or transcripts testimony, provided that the conditions set out in Rule 92 *ter* (A)³⁴ of the Rules are fulfilled.

13. Consequently, it should be recalled that:

- by definition, a witness called by the Prosecution may not be authorised to testify pursuant to Rule 92 *ter* of the Rules without the Accused being able to cross-examine him and thus have the opportunity to challenge the contents of the written statement and the conditions under which it was obtained;
- the conditions for admission formulated by Rule 92 *bis* (B) of the Rules are not applicable in this case. This is also true for the condition that in the eventuality of a witness not attending the hearing, their written statement may not be admitted unless “a declaration by the person making the written statement [is attached] that the contents of the statement are true and correct to the best of that person’s knowledge and belief.”

³⁰ See *supra*, para. 9.

³¹ Submission 380, p. 6. The Accused furthermore adds that these written statements do not corroborate any of the *viva voce* evidence of the Prosecution’s witnesses.

³² Submission 380, pp. 6-7.

³³ Decision of 7 January 2008, pp. 6-8.

V. DISCUSSION

1. On the requests for admission of 92 bis declarations

14. Under the cover of requesting the admission of a “92 bis document” or “92 bis package”, or even an “attestation”, the Prosecution intends to obtain the admission of 92 bis declarations taken pursuant to Rule 92 bis (B) of the Rules that are attached to written witness statements in order to make them admissible within the scope of the proceedings provided by Rule 92 bis. As indicated in paragraph 13 above, these attestations are not relevant within the scope of the present proceedings conducted according to Rule 92 ter of the Rules.

15. The Chamber would furthermore explain that it has not ruled on the missing pages of these “documents”, “92 bis packages” or “declarations”.³⁵

16. The Chamber also notes that written witness statements and sometimes supplementary statements are attached to some of the 92 bis declarations. The Chamber examined these statements when they were given in one of the two working languages of the Tribunal and were provided in full.³⁶

17. Conversely, the Chamber cannot rule on documents provided only in BCS, pursuant to Article 33 of the Statute, which states that “[t]he working languages of the Tribunal shall be English and French”.³⁷

18. The Chamber thus dismisses the Motion with regard to 92 bis declarations and statements annexed to them in BCS, as follows:

- 92 bis declaration dated 6 September 2002 marked ERN 0326-0802 to 0326-0804 and 0307-6028, for Witness VS-1119;

³⁴ Presence of the witness in proceedings in order to be cross-examined and possibly questioned by the judges, declaration and confirmation of the contents of the written statement or transcript of evidence.

³⁵ The case of Witnesses VS-119 (pages 0362-0805 to 0326-0814 have not been provided) and VS-1052 (pages 0357-8591 to 0357-8601 are missing). See footnotes 13 and 23 *supra*.

³⁶ See *infra*, para. 21, written statement dated 12 February 2001 and supplementary statement dated 6 September 2002 for Witness VS-1119.

³⁷ This also holds for exhibits in BCS attached to the statement of Witness VS-1025 dated 9 October 1998 and referenced 0064-3745 to 0064-3753. See footnote 19 *supra*.

- 92 *bis* declaration dated 16 June 2004 marked ERN 0357-8578 to 0357-8581 and a statement in BCS dated 24 April 2004 marked ERN 0357-8582 to 0357-8588, for Witness VS-1025;
- 92 *bis* declaration dated 16 June 2004 marked ERN 0357-8589 to 0357-8590, for Witness [redacted] (VS-1052);
- 92 *bis* declaration dated 1 November 2004 marked ERN 0363-1615 to 0363-1618 and statements in BCS dated 13 June 2004 and 18 March 1995 marked respectively ERN 0363-1619 to 0363-1627 and 0363-1628 to 0363-1638, for Witness VS-1068; and
- 92 *bis* declaration dated 1 November 2004 marked ERN 0363-1495 to 0363-1497 and statements in BCS dated 11 June 2004 and 25 January 2001 marked respectively ERN 0363-1498 to 0363-1504 and 0363-1505 to 0363-1508, for Witness VS-1069.

2. On the requests to admit written statements

(a) Incomplete or imprecise statements

19. The Chamber notes that among the elements disclosed to it by the Prosecution, some of the statements are incomplete or imprecise:

- pages 0603-0811 to 0603-0814 of the statement of Witness VS-018 dated 15 August 2006 are missing; although the statement of Witness VS-018 dated 15 August 2006 strictly speaking is complete, the interpreter's certificate that should be attached to the end of this statement has not been provided;
- the statement made "to local authorities" on 25 January 2001 by Witness VS-1069 does not specify to which authority³⁸ it was given.

20. The Chamber consequently dismisses the Motion with regard to these documents, since it is not able, as things stand, to evaluate their *prima face* reliability. Nevertheless, Witness VS-018 could testify pursuant to Rule 92 *ter* of the Rules about

his statement dated 15 August 2006 on condition that the Prosecution provides the missing interpreter certificate beforehand. Indeed, this statement is relevant because it is related to the Prosecution's pattern evidence that it was authorised to present through the crime sites removed from the Indictment³⁹ by the Decision of 8 November 2006.⁴⁰

(b) Complete Statements

21. Having examined the other documents disclosed in full by the Prosecution, the Chamber finds that the following statements are relevant because they clearly refer to facts alleged in the Indictment or the pattern evidence that the Prosecution was authorised to present through the crime sites removed from the Indictment⁴¹ by the Decision of 8 November 2006.⁴²

- the written statement of Witness VS-031 dated 16 June 2006, mentions in particular the arrival in 1991 of Serbian volunteers to Voćin, municipality of Western Slavonia, removed from the Indictment by the Decision of 8 November 2006,⁴³ and their conduct;
- the written statement of Witness VS-1119 dated 12 February 2001 and his supplementary statement dated 6 September 2002⁴⁴ refer to crimes that were allegedly committed as of the month of August 1991 in Voćin;
- the written statement of Witness [redacted] (VS-1134) dated 27 September 2002, refers in particular to the speech that was allegedly given by the Accused at Hrtkovci on 6 May 1992, the atmosphere that allegedly reigned in the village after the speech and the expulsion of Croatian inhabitants that is said to have taken place;

³⁸ The name and headquarters of the authority are not specified in the statement.

³⁹ These are crime sites in Western Slavonia:, Brčko, Bijeljina, Bosanski Šamac and the vacation centre of Boračko Jezero/Mt. Borašnica.

⁴⁰ Decision on the Application of Rule 73 *bis*, 8 November 2006 (French translation of 26 March 2007) ("Decision of 8 November 2006"), p. 10.

⁴¹ See footnote 39 *supra*.

⁴² See footnote 40 *supra*.

⁴³ *Ibid.*

⁴⁴ These statements with respective ERN 0200-8618 to 0200-8625 and 0307-6081 are attached to the 92 *bis* declaration of 6 September 2002.

- the written statement of Witness VS-1014 dated 13 and 14 July 1997 refers in particular to crimes allegedly committed between April and July 1992 at the *Ekonomija* farm and the *Ciglana* factory;
- the written statement of Witness VS-1105 dated 16, 20 and 21 September 1996 refers in particular to events at the technical school in Karakaj between April and July 1992;
- the written statement of Witness VS-1024 dated 8 October 1998 refers, *inter alia*, to crimes allegedly committed in Nevesinje by a unit known as “Karadorđe”, created by a member of the Serbian Chetnik Movement;
- the two written statements of Witness VS-1025 dated 9 October 1998 and 24 April 2004, describe in particular crimes that were allegedly committed by “Chetnik” soldiers in the Mostar region in June 1992 and the alleged presence of paramilitary units in the region at this time;
- the written statement of Witness VS-1026 dated 10 June 2004 refers particular to crimes that were allegedly committed by “Chetnik” soldiers at the Vrapčići stadium and in the Sutina cemetery building in Mostar;
- the written statement of Witness VS-1051 dated 21 and 22 April 2004 refers in particular to crimes allegedly committed by “Chetnik” soldiers at the Boračko Jezero vacation centre and the elementary school in Zijemlje in June 1992;
- the written statement of Witness [redacted] (VS-1052) dated 24 and 25 April 2004 refers particular to crimes allegedly committed by “Chetnik” soldiers at the elementary school in Zijemlje and in the SUP building in Nevesinje in June 1992;
- the two written statements by Witness VS-1068 dated 18 March 1995 and 13 June 2004 refer *inter alia* to crimes allegedly committed by “Šešelj’s men” in the Sutina cemetery building;

- the written statement of Witness VS-1069 dated 11 June 2004 refers in particular to crimes allegedly committed by “Šešelj’s men” in the Sutina cemetery building.

22. The Chamber furthermore notes that all together these statements comprise a small number of pages and that admitting them through the procedure set out in Rule 92 *ter* of the Rules would go to the expeditiousness and efficiency sought by the introduction of this Rule.⁴⁵

23. The Chamber consequently finds that it is in the interest of justice to partially grant the Motion and allow the witnesses who have given the above-mentioned statements⁴⁶ to testify before the Chamber based on Rule 92 *ter* of the Rules.

24. The Chamber recalls that these statements will only be admitted when the formal criteria in Rule 92 *ter* have been met, as follows:

(i) the witness is present in court and is available for cross-examination and any questioning by the Judges;

(ii) the witness attests that the written statement accurately reflects that witness’ declaration and what the witness would say if examined.

VI. DISPOSITION

25. For the foregoing reasons, pursuant to Articles 20 (1), 21 and 33 of the Statute and Rules 6 (D), 89 and 92 *ter* of the Rules, the Chamber **DECIDES** that:

(i) Witnesses VS-031, VS-1119, [redacted] (VS-1134), VS-1014, VS-1105, VS-1024, VS-1025, VS-1026, VS-1051, [redacted] (VS-1052), VS-1068 and

⁴⁵ See for example *The Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. IT-04-82-PT, Decision on Prosecution’s First Revised Motion Pursuant to Rule 92 *bis* and on Prosecution’s Motion Pursuant to Rule 92 *ter*, confidential, 30 March 2007, para. 44; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on the Application of Rule 92 *ter* of the Rules, 25 June 2007, p. 2; *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, Decision on Prosecution Motion to Admit Written Witness Statements Under Rule 92 *ter*, confidential, 27 September 2007, para. 10.

⁴⁶ See *supra*, para. 21.

VS-1069 shall testify in application of Rule 92 *ter* based on the following statements:

- a. the written statement of Witness VS-031 dated 16 June 2006, marked ERN 0601-2587 to 0601-2602;
- b. the written statement of Witness VS-1119 dated 12 February 2001, marked ERN 0200-8618 to 0200-8625 and his supplementary statement dated 6 September 2002, marked ERN 0307-6081;
- c. the written statement of Witness [redacted] (VS-1134) dated 27 September 2002, marked ERN 0189-8834 to 0189-8840;
- d. the written statement of Witness VS-1014 dated 13 and 14 July 1997, marked ERN 0051-2380 to 0051-2389;
- e. the written statement of Witness VS-1105 dated 16, 20 and 21 September 1996, marked ERN 0043-7218 to 0043-7226;
- f. the written statement of Witness VS-1024 dated 8 October 1998, marked ERN 0064-3903 to 0064-3911;
- g. the two written statements of Witness VS-1025 dated 9 October 1998 and 24 April 2004, marked respectively ERN 0064-3734 to 0064-3744 and ERN 0356-2387 to 0356-2392;
- h. the written statement of Witness VS-1026 dated 10 June 2004, marked ERN 0357-8559 to 0357-8565;
- i. the written statement of Witness VS-1051 dated 21 and 22 April 2004, marked ERN 0356-2400 to 0356-2412;
- j. the written statement of Witness [redacted] (VS-1052) dated 24 and 25 April 2004, marked ERN 0356-2377 to 0356-2386;

k. the two written statements of Witness VS-1068 dated 18 March 1995 and 13 June 2004, marked respectively ERN ET RR04-7394 to RR04-7404 and 0357-8609 to 0357-8616;

l. the written statement of Witness VS-1069 dated 11 June 2004, marked ERN 0357-8552 to 0357-8558;

(ii) the statements mentioned under subparagraph (i) above shall not be admitted until the formal conditions of Rule 92 *ter* have been fulfilled;

(iii) Witness VS-018 shall testify pursuant to Rule 92 *ter* of the Rules based on his written statement dated 15 August 2006, marked ERN numbers 0603-0802 to 0603-0810, provided that the Prosecution submits beforehand the interpreter certificate that should be attached to the end of this statement. If the certificate is submitted, the written statement dated 15 August 2006 shall only be admitted after the formal conditions of Rule 92 *ter* have been fulfilled.

26. The Chamber **RECALLS** that in the Decision of 7 January 2008, it had:

- dismissed the request to admit exhibits related to the written statements but authorised the Prosecution to present a new request to admit exhibits related to these statements, clearly justifying the relevance of these exhibits and their connection to the witness; and

- deferred to rule on the request to admit transcript testimony in other cases for witnesses Ivan Grujić, Dravor Strinović and Ewa Tabeau that the Prosecution intends to call as experts, until the Chamber rules on their status as experts.

27. The Chamber **DISMISSES** in all other respects the request to admit the other documents included in the present decision.⁴⁷

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

/signed/

⁴⁷ See *supra*, paras. 14-20.

Jean-Claude Antonetti
Presiding Judge

Done this twenty-seventh day of February 2008
At The Hague
The Netherlands

[Seal of the Tribunal]