

UNITED
NATIONS

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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 March 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: 3 March 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

CONFIDENTIAL DOCUMENT

**SECOND ORDER REGARDING THE TESTIMONY OF ZORAN
DRAŽILOVIĆ AS A WITNESS SUMMONED BY THE CHAMBER**

The Office of the Prosecutor

Mr Daryl Mundis

The Accused

Mr Vojislav Šešelj

The Witness

Zoran Dražilović

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”),

NOTING the letter to the Chamber from Milan Terzić, attorney, on behalf of his client, Zoran Dražilović (Witness VS-010), delivered to the Tribunal Liaison Office in Belgrade (“Letter of 25 February”);

NOTING the letter to the Chamber signed by Zoran Dražilović, filed with the Tribunal Liaison Office in Belgrade by Petar Jojić, associate of Vojislav Šešelj (“Accused”), on 24 December 2007, in response to the subpoena issued on 4 December 2007 with respect to Zoran Dražilović as a witness called by the Prosecution (“Letter of 24 December”);

CONSIDERING that in the “Decision on Prosecution Motion pursuant to Rule 77 of the Rules of Procedure and Evidence in Respect of Witness VS-010” rendered confidentially by the Chamber on 5 February 2008 (“Decision of 5 February”), the Chamber considered that

the clear expression by Witness VS-010 to testify as a “Defence witness” constitutes a just excuse within the meaning of Rule 77 (A) (iii) of the Rules;

[...] the Chamber nonetheless reiterates its position that it is in the interests of justice for Witness VS-010 to testify in this case as soon as possible, since he was scheduled to testify on key elements of the case [...]

[...] organising the modalities of the examination of witnesses is a matter within the discretionary power of the Chamber, in the exercise of which the Chamber may show some flexibility in its search for the ascertainment of the truth;

[...] in this context the Chamber decides *proprio motu* to summon Witness VS-010 to testify before it;¹

CONSIDERING that in the letter of 25 February, Zoran Dražilović requests (i) the lifting of the protective measures for him; (ii) guarantees for his safety during his journey to The Hague; (iii) the possibility to be accompanied by an attorney; (iv) the

payment of his travel costs and of the fees for his lawyer; (v) the possibility of being accompanied by representatives from the Ministry of the Interior of the Republic of Serbia, and (vi) a response to the Letter of 24 December;

CONSIDERING that while protective measures are always granted in an attempt to strike a balance between the protection of witnesses and the rights of the Accused, it is ultimately up to each witness to decide to testify before the Chamber without any protective measures and, consequently, the pseudonym – which was supposed to be used up to the testimony of Zoran Dražilović² – need no longer be maintained,

CONSIDERING that the Chamber will rule upon the merits of granting Zoran Dražilović safe conduct in a separate decision;

CONSIDERING that as regards administrative modalities, in particular the reimbursement of the travel costs for Zoran Dražilović and his attorney, the Chamber requests the Registry to make the necessary arrangements to facilitate the testimony of this witness before the Tribunal, within the framework of costs that are generally covered;

CONSIDERING nonetheless that at this stage of the proceedings, there is no need to entitle Zoran Dražilović's attorney to assist his client inside the courtroom, since Zoran Dražilović is being called before the Chamber as a witness only and not as a suspect;

CONSIDERING that the Chamber will inform Zoran Dražilović, at the appropriate time and as necessary, that under Rule 90 (E) of the Rules of Procedure and Evidence ("Rules") he may "object to making any statement which might tend to incriminate the witness. The Chamber may, however, compel the witness to answer the question. Testimony compelled in this way shall not be used as evidence in a subsequent prosecution against the witness for any offence other than false testimony";

CONSIDERING furthermore that the Chamber does not have jurisdiction to order the presence of representatives of the Ministry of the Interior of the Republic of Serbia into the territory of the Kingdom of the Netherlands;

¹Decision on Prosecution Motion pursuant to Rule 77 of the Rules of Procedure and Evidence in

CONSIDERING that with respect to the Letter of 24 December, the Chamber can only reiterate that witnesses are not the property of the parties and that the “circumstances surrounding the various statements by Witness VS-010 are unclear and that the Chamber cannot rule out that this may be caused by reasons beyond his control”;³

CONSIDERING that under these circumstances, it is not the role of the Chamber to “respond” to a letter addressed to it by an associate participating in the defence of the Accused on the subject of complaints by a witness the Prosecution intended to call;

FOR THESE REASONS

PURSUANT TO Rules 54 and 98 of the Rules

ORDERS that pseudonym VS-010 be lifted in respect of Zoran Dražilović

RECALLS that

(i) Witness Zoran Dražilović shall appear as soon as possible as a witness summoned by the Chamber;

(ii) the Victims and Witnesses Section of the Tribunal (“VWS”) shall immediately make the necessary arrangements for the arrival of Zoran Dražilović, and in particular shall examine whether it is possible to cover the travel costs of his attorney, Milan Terzić;

(iii) the provisions of the Decision of 5 February shall continue to apply.

DEFERS its ruling on the issuance of safe conduct.

DISMISSES the requests of Witness Zoran Dražilović inasmuch as they concern

(i) the presence of his attorney inside the courtroom;

(ii) the arrival of representatives of the Ministry of the Interior of the Republic of Serbia into the territory of the Kingdom of the Netherlands.

Respect of Witness VS-010, confidential, 5 February 2008, pp. 2-3.

² Decision on Adopting Protective Measures, confidential, 30 August 2007, p. 8.

³ Decision of 5 February, p. 2.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this third day of March 2008
At The Hague
The Netherlands

[Seal of the Tribunal]