



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: 23 June 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: 23 June 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON THE ACCUSED'S MOTION TO RESCIND PROTECTIVE
MEASURES (SUBMISSION 389)**

The Office of the Prosecutor

Ms Christine Dahl
Mr Daryl Mundis

The Accused

Mr Vojislav Šešelj

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 motion for an order to rescind all protective measures granted to Prosecution witnesses who are not victims, submitted by Vojislav Šešelj ("Accused") on 8 May 2008 and filed on 19 May 2008 ("Motion");¹

NOTING the response to the Motion filed by the Prosecution on 3 June 2008 ("Response");²

NOTING the significant number of orders and decisions in this case related to protective measures, specifically:

- (i) the Decision on Adopting Protective Measures, rendered confidentially on 30 August 2007 ("Decision of 30 August 2007"), in which the pre-trial Judge granted, further to a request from the Office of the Prosecutor ("Prosecution"), a series of protective measures for the witnesses the Prosecution intended to call;³
- (ii) the Decision on Prosecution Motion for Reconsideration of the Decision on Protective Measures of 30 August 2007, rendered confidentially on 16 October 2007 ("Decision of 16 October 2007"),⁴ in which the pre-trial Judge reviewed the Decision of 30 August 2007 in light of the arguments set forth by the Prosecution;⁵

¹ Motion of Professor Vojislav Šešelj for Trial Chamber III to Order that All Protective Measures Granted to the Prosecution Witnesses Who are Not Victims Be Rescinded, to Dispense with Closed Sessions and to Order that Witnesses Who Continue to Enjoy Protective Measures May no Longer Testify in Closed Session, presented on 8 May 2008 and filed on 19 May 2008.

² Prosecution's Response to the Accused's Motion for Trial Chamber III to Order that All Protective Measures Granted to the Prosecution Witnesses Who are Not Victims Be Rescinded, to Dispense with Closed Sessions and to Order that Witnesses who Continue to Enjoy Protective Measures May no Longer Testify in Closed Session, 3 June 2008 (presented on 2 June 2008).

³ Decision on Adopting Protective Measures, confidential, 30 August 2007, p. 8.

⁴ Decision on Prosecution Motion for Reconsideration of the Decision on Protective Measures of 30 August 2007, confidential, 16 October 2007.

⁵ Prosecution Motion Regarding Protective Measures for Concerned Witnesses, confidential and *ex parte*, 8 October 2007.

- (iii) the Oral Decision of 7 November 2007 on the request for review of the Decision of 16 October 2007 (“Oral Decision of 7 November 2007”)⁶ denying the requests of the Accused and the Prosecution and upholding the Decisions of 30 August and 16 October 2007;
- (iv) the Decision of 14 November 2007,⁷ granting the Accused’s oral application for certification to appeal the Oral Decision of 7 November 2007;
- (v) the Decision of 11 January 2008 on review of the Decision of 30 August 2007 (“Decision of 11 January 2008”)⁸ denying the Accused’s motion;⁹
- (vi) the Decision of the Appeals Chamber of the Tribunal dated 24 January 2008,¹⁰ dismissing the Accused’s interlocutory appeal against the Oral Decision of 7 November 2007;¹¹

CONSIDERING that in accordance with Article 20 (1) of the Statute of the Tribunal (“Statute”), the Chamber shall ensure that the proceedings are conducted with full respect for the rights of the Accused and due regard for the protection of victims and witnesses;

CONSIDERING that Article 21 (2) of the Statute guarantees the right of all Accused to a public hearing, subject to the provisions of Article 22 related to the protection of victims and witnesses;

CONSIDERING that pursuant to Rule 69 of the Rules of Procedure and Evidence (“Rules”), a Chamber may order the non-disclosure of the identity of a victim or

⁶ Oral Decision on request for review of the decision on Prosecution request for reconsideration of the Decision on Adopting Protective Measures of 30 August 2007, 7 November 2007, Transcript in French (“T(F)”) 1784-1786.

⁷ Decision on the Accused’s Motion for Certification to Appeal the Oral Decision of 7 November 2007, 14 November 2007.

⁸ Decision on Vojislav Šešelj’s Motion for Reconsideration of the Decision of 30 August 2007 on Adopting Protective Measures, 11 January 2008, para. 14.

⁹ Professor Vojislav Šešelj’s Motion for Review of the Decision of 30 August 2007 on Adopting Protective Measures, presented on 2 November 2007 and filed confidentially on 9 November 2007.

¹⁰ Decision on Vojislav Šešelj’s Appeal Against the Trial Chamber’s Oral Decision of 7 November 2007, 24 January 2008.

witness prior to the trial, in sufficient time to allow adequate time for the preparation of the Defence;

CONSIDERING that according to Rule 75 of the Rules the Chamber may grant various protective measures for the privacy and protection of victims and witnesses provided that the measures are consistent with the rights of the Accused;

CONSIDERING that a "Trial Chamber has an inherent power to reconsider its own decisions. It can receive a request for reconsideration if the moving party satisfies the Chamber of the existence of a clear error of reasoning in the impugned decision or of particular circumstances, new facts or new arguments, justifying its reconsideration in order to avoid injustice";¹²

CONSIDERING that the Accused requests (1) that the protective measures granted to Prosecution witnesses who are not victims be suspended, (2) that only victims of sexual violence be authorized to testify in closed session, (3) that the granting of closed session testimony be rescinded should any witnesses continue to enjoy protective measures,¹³ and (4) that the confidential status of the evidence of Witness VS-007 be lifted in its entirety;¹⁴

CONSIDERING that in its Response, the Prosecution submits that the Accused has failed to present any new arguments justifying the reconsideration by the Chamber of the decisions previously granting protective measures;¹⁵

CONSIDERING that first the Chamber deems that the allegations that the protective measures granted to witnesses called by the Prosecution amount to a tacit

¹¹ Interlocutory Appeal by Professor Vojislav Šešelj Against the Oral Decision of the Trial Chamber of 7 November 2007, 22 November 2007.

¹² *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Borislav Pušić*, Case No. IT-04-74-T, Decision on Request for Reconsideration and Certification to Appeal the Decision for Admission of the Statement of Jadranko Prlić, 8 October 2007, p. 11 (footnotes omitted); citing *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29-A, "Decision on Defence's Request for Reconsideration", 16 July 2004, pp. 3-4; Decision of 11 January 2008, para. 9.

¹³ Motion, p. 8.

¹⁴ *Id.*, p. 7.

¹⁵ Response, para. 2.

authorization to lie with impunity at the trial¹⁶ are improper and unfounded and that, as a result, they must be dismissed;¹⁷

CONSIDERING that the Accused further submits that the use of closed sessions violates the right to a public hearing and that there exists no reason justifying the exclusion of the public from the proceedings unless it is to protect the victims of sexual violence;¹⁸

CONSIDERING that the Chamber recalls that neither the Statute nor the Rules make any distinction that would result in the fact that only witnesses who are victims may be granted protective measures;¹⁹

CONSIDERING that the same is true of victims in that neither the Statute nor the Rules make any distinction in the granting of protective measures based on the category of victims, be they victims of sexual violence or not;

CONSIDERING that the argument according to which protective measures were “assigned by inertia, without any examination or identification of the reasons cited”²⁰ is unfounded, since the Chamber granted these protective measures only to the extent that the measures achieved a reasonable balance between the protection of witnesses and the rights of the Accused;²¹

CONSIDERING in addition that the Chamber generally asks witnesses to confirm orally, prior to their testimony, the reasons why the protective measures were requested;²²

CONSIDERING that the reasons why the protective measures were granted by the Chamber to Witness VS-007²³ have not changed and that there is nothing to justify lifting them at this stage;

¹⁶ Motion, pp. 3, 6.

¹⁷ The Chamber notes that the Accused refers erroneously to Witnesses VS-016 and VS-022 who have yet to testify in this case.

¹⁸ Motion, p. 7.

¹⁹ Decision of 11 January 2008, para. 14.

²⁰ Motion, p. 6.

²¹ Decision of 30 August 2007, p. 7.

²² See in particular, hearing of 28 May 2008, T(F) 7514 (closed session); hearing of 4 June 2008, T(F) 7783-7797 (private session); hearing of 18 June 2008, T(F) 8432-8434 (private session).

CONSIDERING that the Accused has therefore failed to demonstrate the existence of a clear error or new circumstances justifying a variation of the protective measures already granted in this case;

FOR THESE REASONS

DENIES the Motion.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-third day of June 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

²³ Decision of 30 August 2007, p. 8.