



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: 2 April 2009  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

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

**Acting Registrar:** Mr John Hocking

**Decision of:** 2 April 2009

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

***PUBLIC DOCUMENT***

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**DECISION ON PROSECUTION REQUEST FOR ADMISSION OF WRITTEN  
STATEMENTS BY WITNESS VS-1068 PURSUANT TO RULE 92 *TER* OF  
THE RULES OF PROCEDURE AND EVIDENCE**

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**The Office of the Prosecutor**

Mr Daryl Mundis  
Ms Christine Dahl

**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 request by the Office of the Prosecutor ("Prosecution") presented orally on 26 November 2008 ("Request") to admit the written statements by Witness VS-1068 of 18 March 1995 and 13 June 2004 ("Statements") pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal ("Rules");<sup>1</sup>

**NOTING** the Decision of 27 February 2008 in which the Chamber decided that the statements of certain witnesses, including the two statements of Witness VS-1068, would not be admitted until the formal criteria under Rule 92 *ter* had been fulfilled,<sup>2</sup> i.e. that the witness be present at the hearing so that he can be cross-examined and may reply to any questions put by the Judges, and the confirmation by the witness that the written statement faithfully reflects what he said and that he would say the same if he were questioned;

**CONSIDERING** that Witness VS-1068 testified on 26 November 2008, that he was able to reply to questions put to him by the Judges and provided the Accused with the opportunity to cross-examine him, that he confirmed the accuracy of what was said in the Statements for which admission was sought in the Request, and that he stated he would say the same if he were questioned again,<sup>3</sup> thus fulfilling the formal criteria set out in Rule 92 *ter* of the Rules;

**CONSIDERING**, nevertheless, that at the same hearing, the Accused objected to the admission of the Statement of 18 March 1995, made at the Ministry of the Interior of the Republic of Bosnia and Herzegovina, and to the one made on 13 June 2004 before investigators from the Office of the Prosecutor that supplements it, on the grounds

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<sup>1</sup> Hearing of 26 November 2008, T(F) 12262-12263. The written statements of Witness VS-1068 of 18 March 1995 and 13 June 2004 were marked for identification as MFI P658 and MFI 659 respectively, T(F) 12271.

<sup>2</sup> "Second Decision on the Prosecution's Consolidated Motion pursuant to Rule 89 (F), 92 *bis*, 92 *ter* and 92 *quater* of the Rules of Procedure and Evidence", confidential, 27 February 2008, paras. 24-25.

<sup>3</sup> Hearing of 26 November 2008, T(F) 12268-12271, 12279.

that it is not Tribunal practice to accept, pursuant to Rule 92 *ter* procedure, a statement recorded by Serbian, Croatian or Bosnian authorities;<sup>4</sup>

**CONSIDERING** that nothing in the wording of Rule 92 *ter* opposes the admission of a statement made by state authorities;

**CONSIDERING** that Tribunal jurisprudence clearly establishes that the criteria required by Rule 92 *ter* for the admission of a written statement should be considered as fulfilled as soon as the witness's words are documented and preserved;<sup>5</sup>

**CONSIDERING** that the Accused does not bring forth any decision in which the Chamber of the Tribunal refused to admit under Rule 92 *ter* a written statement recorded by such state authorities for that reason alone;<sup>6</sup>

**CONSIDERING**, moreover, that the matter of the relevance of these Statements has already been examined by the Chamber in its decision of 27 February 2008<sup>7</sup> and that it is therefore not necessary to come back to it;

#### **FOR THE FOREGOING REASONS**

**PURSUANT TO** Rule 92 *ter* of the Rules,

**GRANTS** the Request and **ORDERS** admission under seal of the written statements of Witness VS-1068 dated 18 March 2004 (MFI P658) and 13 June 2004 (MFI P659).

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

                    
/signed/  
Jean-Claude Antonetti  
Presiding Judge

<sup>4</sup> Hearing of 26 November 2008, T(F) 12263.

<sup>5</sup> *The Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, "Decision on Prosecution Motion for Admission of Evidence pursuant to Rule 92 *bis* and/or 92 *ter*", confidential, 2 September 2008, para. 11.

<sup>6</sup> The Chamber notes in this respect that statements made before local authorities were admitted in the past by this Tribunal pursuant to Rule 92 *quater* of the Rules *see The Prosecutor v. Popović et al.*, Case No. IT-05-88-T, "Decision on Gvero's Motion for the Admission of Evidence Pursuant to Rule 92 *quater*", 3 February 2009.

<sup>7</sup> "Second Decision on the Prosecution's Consolidated Motion pursuant to Rule 89 (F), 92 *bis*, 92 *ter* and 92 *quater* of the Rules of Procedure and Evidence", confidential, 27 February 2008, para. 21.

Done this second day of April 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**