



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: 18 September 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: 18 September 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON MOTION BY THE ACCUSED TO DISMISS ALL CHARGES
AGAINST HIM (SUBMISSION 387) AND ITS ADDENDUM (SUBMISSION 391)**

The Office of the Prosecutor

Ms Christine Dahl
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 Submission 387 by Vojislav Šešelj (“Accused”), filed on 22 May 2008 (“Motion”), in which the Accused requests the immediate withdrawal of the Indictment against him (“Indictment”) and his release, as well as the urgent translation of relevant excerpts about him in the book published by Carla Del Ponte (“Ms Del Ponte”).¹ The Office of the Prosecutor (“Prosecution”) filed its response to the Motion on 5 June 2008 (“Response”).² On 14 July 2008, Submission 391 was filed by the Accused as a supplement to the Motion (“Addendum”),³ to which the Prosecution responded on 28 July 2008.⁴

II. ARGUMENTS OF THE PARTIES

A. The Motion

2. The Accused bases his Motion on an excerpt from a book entitled “*La Caccia*”, written by Ms Del Ponte, the former Prosecutor of the Tribunal, in which she explains that during a meeting with the former Serbian Prime Minister Zoran Đinđić (“Mr Đinđić”), Đinđić “requested only one thing in connection with Šešelj: ‘take him away and do not bring him back’”.⁵

3. According to the Accused, who was indicted based on a desire to remove him from the political landscape of Serbia, the raising of an indictment signed by Ms Del Ponte against him, and all of the successive amendments to it, constitute an abuse of the functions of the Prosecutor of the Tribunal. The Accused notes that he already

¹ Motion for Trial Chamber III to Issue a Decision Dismissing All the Charges Brought by the Prosecution Against Professor Vojislav Šešelj, dated 23 April 2008 and filed on 22 May 2008. A confidential and unredacted version was filed on the same day (*see* the Chamber’s oral decision on the filing of the Accused’s motion of 23 April 2008, issued 21 May 2008, transcript in French (“T(F)”) 7250-7251 – closed session).

² Prosecution Response to the Accused’s Submission 387, filed on 5 June 2008 and received by the Accused in BCS on 25 June 2008 (*cf. procès-verbal* of receipt of documents).

³ Supplementary Motion of Professor Vojislav Šešelj to his Motion for Trial Chamber III to Issue a Decision Dismissing All the Charges Brought by the Prosecution, dated 4 July 2008 and filed on 14 July 2008.

⁴ Prosecution Response to the Accused’s Submission 391, filed on 28 July 2008 and received by the Accused on 8 August 2008 (*cf. procès-verbal* of receipt of documents).

⁵ Motion, p. 3.

raised similar arguments on 24 February 2003⁶ and that “Carla Del Ponte clearly admitted it in her book issued in March 2008”.⁷

4. According to the Accused, Ms Del Ponte was inclined to entertain requests from the regime in power in Serbia since 5 October 2000, when one considers her political involvement under the guise of working for the Prosecution.⁸ It is alleged that these claims are common knowledge which Ms Del Ponte only confirms with the publication of her book.⁹ The Accused argues that on four occasions prior to 2003, he publicly demanded clarification as to whether an indictment had been issued against him and whether he was suspected of “war crimes”, to which the Prosecution answered that there was no indictment against him and that he was not a subject of interest to it.¹⁰

5. The Accused relies on Article 16 (2) of the Statute and acknowledges that Mr Đinđić’s request does not constitute “an instruction, suggestion, petition or proposal” but rather a “request”.¹¹ The Accused refers nonetheless to certain remarks made by Đinđić,¹² from which, in his view, it is clear that Mr Đinđić knew that the Prosecutor would comply with his “request”.¹³ According to the Accused, it is therefore clear that Mr Đinđić’s request to the Prosecutor of the Tribunal, which was allegedly met, had no grounding in law and would run counter to Article 16 (2) of the Statute.¹⁴

6. The Accused further refers to the Appeals Chamber jurisprudence in *Čelibići* which sets out the criteria for determining the existence of discriminatory prosecution, specifically that it must be demonstrated that (i) an unlawful or improper (including discriminatory) motive for the prosecution exists and (ii) that other similarly situated persons were not prosecuted.¹⁵ According to the Accused, the Appeals Chamber’s analysis is applicable in the proceedings against him. First, as regards the first

⁶ Motion, p. 4. It is appropriate to note that the Accused does not specify the circumstances in which, as he submits, these arguments were put forth on that date.

⁷ Motion, p. 4.

⁸ *Id.*, p. 5.

⁹ *Id.*, pp. 5-6.

¹⁰ *Id.*, p. 5.

¹¹ *Id.*, pp. 6-7.

¹² *Id.*, p. 7. The Accused quotes Đinđić as follows: “*Šešelj’s antics in the courtroom could cause even worse confusion than Milošević’s hard-headedness.*”

¹³ Motion, p. 7.

¹⁴ *Ibid.*

¹⁵ *Id.*, p. 8, referring to *The Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-A, 20 February 2001, para. 611 (“*Čelibići*”).

criterion, no explanation is necessary considering Ms Del Ponte's "shameful and belated admission" concerning her true motives to initiate proceedings and issue the Indictment against the Accused.¹⁶ According to the Accused, it is clear that Ms Del Ponte's motives were "unlawful, improper and discriminatory."¹⁷ Second, as regards the second criterion, the Accused points out that the Indictment contains a list of joint criminal enterprise participants with whom the Accused has nothing in common and that this "indicates that the instructions by Zoran Đinđić were actually not very detailed and that the only important thing was to remove [the Accused] at any cost and as quickly as possible from the political landscape of Serbia."¹⁸ The absence of indictments against these "accomplices or co-perpetrators in the joint criminal enterprise" who currently hold political office "illustrate[s] the arbitrary approach and motives which guided Carla Del Ponte" to prosecute the Accused, an opponent of the political regime at the time.¹⁹

7. The Accused concludes that the Indictment is based on political considerations and therefore has no legal foundation which, according to him, Ms Del Ponte admits herself in her book.²⁰ As such, it is alleged that Ms Del Ponte abused her position as Prosecutor of the Tribunal and that the purpose of the Indictment was not to establish the individual responsibility of the Accused in the alleged commission of crimes but rather to remove him from the political landscape of Serbia.²¹ Consequently, it is alleged that the Indictment is invalid²² and that the interests of justice prevent the conduct of a fair trial based on such an indictment.²³

¹⁶ *Id.*, p. 9.

¹⁷ *Ibid.*

¹⁸ *Id.*, pp. 9-10.

¹⁹ *Id.*, p. 10.

²⁰ *Id.*, pp. 10-11.

²¹ *Id.*, p. 11.

²² *Ibid.*

²³ *Ibid.*

B. Addendum to the Motion

8. The Addendum contains additional information that the Accused puts forth in support of the Motion and which he requests be taken into account when the Chamber rules on the Motion.²⁴

9. The supplementary information corresponds to two articles published on 27 and 28 June 2008 in the Belgrade daily “*Kurir*”, which present an account of meetings allegedly held in Lugano on 14 August 2000 between Mr Đinđić, Ms Del Ponte and Judge Richard May.²⁵ According to the Accused, these articles prove that Ms Del Ponte abused her authority when she indicted the Accused and thus placed herself in the service of the politics of the time.²⁶ According to the Accused, it is difficult to support the claim that there is a legal basis “for what is evidently political persecution.”²⁷

10. The first article was published on 27 June 2008 and is entitled “Remove Šešelj!” It contains the following subtitle: “Lugano, 14 August 2000: Zoran Đinđić and Carla Del Ponte agree who must be sent to The Hague.”²⁸ The Accused emphasized certain passages of this excerpt from the conversation during which Ms Del Ponte allegedly stated that “if the Radicals upset the political situation, let Šešelj take the blow and your lawyers can direct the indictment in the desired direction,” to which Mr Đinđić allegedly responded “[the members of the SRS] are aggressive and unpredictable. The Socialists are easy to deal with because many people have already distanced themselves from Milošević. This is why Šešelj must be in the Tribunal’s custody.”²⁹ The Accused further noted the following remark from Ms Del Ponte, as related by the daily: “It will be difficult to formulate charges against Šešelj because he was not in power during the wars and cannot be charged with command responsibility.”³⁰

11. The second article referred to by the Accused was published on 28 June 2008 and is entitled “Try Them All”. It contains the following subtitle: “In the second

²⁴ Addendum, pp. 6-7.

²⁵ *Id.*, p. 3.

²⁶ Addendum, p. 7.

²⁷ *Id.*, p. 7.

²⁸ Addendum, p. 3.

²⁹ *Ibid.*

³⁰ *Id.*, p. 4.

round of talks between Zoran Đinđić and Carla Del Ponte, Judge Richard May says that top political military and police officials of Serbia must be tried.”³¹ According to the account published by the Belgrade daily, Judge Richard May stated what was reproduced in the subtitle and spoke with Mr Đinđić. It is alleged that Mr Đinđić stated that the Accused represented the greatest obstacle after the change in political regime and as a result had to vanish forever from the political landscape of Serbia. It is alleged that Mr Đinđić further asked what the maximum sentence would be for an individual convicted of participating in a joint criminal enterprise intending to expel Croats, Muslims and other non-Serbs with a view to creating a Greater Serbia. It is alleged that Judge Richard May responded that he had “studied Šešelj’s activities” and that “this is a man with numerous stints in prison who is reputed to know his law.”³²

C. The Response to the Motion and to the Addendum

12. The Prosecution requests that the Motion be denied and that the Accused be admonished “against filing further vexatious and frivolous motions”.³³ The Prosecution submits that the Motion takes up the arguments put forth in a 2004 motion which was dismissed at that time by the President of the Tribunal as lacking any basis.³⁴ According to the Prosecution, the Accused is perfectly aware of the fact that the Indictment had already been confirmed when Ms Del Ponte met Mr Đinđić. Indeed, the Prosecution notes that the Accused failed to specify in his Motion that this meeting took place on 17 February 2003, the date which appears just a few lines before the sentence quoted by the Accused. The Prosecution submits that the Indictment had already been filed and confirmed on 14 February 2003.³⁵ Therefore, in the view of the Prosecution, there is no link between Mr Đinđić’s alleged statements and the Prosecutor’s alleged acts. On this basis alone the Motion should be denied.

13. The Prosecution nonetheless points out that even if the sequence of events were to confirm the “conspiracy theory” put forth by the Accused, the Motion fails to present evidence to rebut the presumption that Ms Del Ponte validly exercised the

³¹ *Ibid.*

³² Addendum, p. 6.

³³ Response, para. 1.

³⁴ Case No. IT-03-67-PT, Decision on Request to Exclude the Prosecutor of the International Tribunal – Carla Del Ponte, filed on 3 December 2004.

³⁵ Response, para. 3.

prosecutorial functions conferred upon her by the Statute.³⁶ Indeed, “the breadth of the discretion of the Prosecutor, and the fact of her statutory independence, imply a presumption that the prosecutorial functions under the Statute are exercised regularly.” Accordingly, to rebut this presumption, the Accused had to establish that “the discretion has in fact not been exercised in accordance with the Statute” and that “the evidence must be such that a clear inference can be drawn that the Prosecutor was motivated by an improper factor”.³⁷ The Prosecution submits that no such evidence was offered.³⁸

14. In its response to the Addendum, the Prosecution submits that the Addendum has no factual or legal basis and must be dismissed.³⁹

III. APPLICABLE LAW

15. According to Article 1 of the Statute, the Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991. In accordance with Article 16 of the Statute, the Prosecutor shall be responsible for the investigation and prosecution of persons presumed responsible for these violations. In the exercise of his or her functions, the Prosecutor shall act independently and shall not seek or receive instructions from any Government or from any other source.⁴⁰ Accordingly, upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the Accused is charged under the Statute.⁴¹ The Prosecutor shall attach the supporting material to the indictment containing a concise statement of the facts and of the crime(s) with which the person is charged; the indictment is then forwarded to the Registrar of the Tribunal for confirmation by a Judge.⁴² Only after an examination of each of the counts and of the supporting materials shall the judge, if satisfied that a

³⁶ *Id.*, para. 5.

³⁷ *Id.*, para. 6 referring to the *Čelibići* Appeal Judgement, para. 611.

³⁸ Response, para. 6.

³⁹ Response to the Addendum, p. 2.

⁴⁰ Article 16 (2) of the Statute.

⁴¹ Article 18 (4) of the Statute.

⁴² Rule 47 (B) of the Rules.

prima facie case has been established by the Prosecutor, confirm the indictment. If not so satisfied, the indictment shall be dismissed.⁴³

16. As regards the acts of the Prosecutor of the Tribunal and the manner in which this organ carries out its duties, the Appeals Chamber in *Čelibići* considered that

The breadth of the discretion of the Prosecutor, and the fact of her statutory independence, imply a presumption that the prosecutorial functions under the Statute are exercised regularly. This presumption may be rebutted by an appellant who can bring evidence to establish that the discretion has in fact not been exercised in accordance with the Statute; here, for example, in contravention of the principle of equality before the law in Article 21. This would require evidence from which a clear inference can be drawn that the Prosecutor was motivated in that case by a factor inconsistent with that principle. Because the principle is one of *equality* of persons before the law, it involves a comparison with the legal treatment of other persons who must be similarly situated for such a comparison to be a meaningful one. This essentially reflects the two-pronged test advocated by [the Defence] and by the Prosecution of (i) establishing an unlawful or improper (including discriminatory) motive for the prosecution and (ii) establishing that other similarly situated persons were not prosecuted.⁴⁴

17. Accordingly, to rebut the presumption that the Prosecutor exercised her functions exercised “regularly”, it must be established that the discretion has not been exercised in accordance with the Statute. In the case before the Appeals Chamber, the Appellant contended that he was the object of discriminatory prosecution on the part of the Office of the Prosecutor, specifically prosecution in which the criteria for selecting persons for prosecution are based not on considerations of apparent criminal responsibility alone, but on extraneous reasons, such as administrative convenience. In that case, the Appellant maintained that the Prosecutor’s decision to seek the withdrawal of indictments against other accused, without seeking the discontinuation of the proceedings against him, was evidence of a discriminatory purpose.⁴⁵ The Appeals Chamber held, on one hand, that a decision to identify a person for prosecution on the basis that they are believed to have committed exceptionally brutal offences, made in the context of a need to concentrate the resources of the Office of

⁴³ Article 19 (1) of the Statute and Rule 47 (E) of the Rules.

⁴⁴ *Čelibići* Appeal Judgement, para. 611.

⁴⁵ *Id.*, para. 612.

the Prosecutor, can in no way be described as discriminatory and, on the other hand, that the Prosecutor's decision to withdraw certain indictments concerned persons who (unlike the Appellant) had not been arrested or detained, but could nonetheless be tried at a later stage by the Tribunal or national jurisdictions.⁴⁶

18. Article 21 (1) of the Statute explicitly refers to the principle of equality before the law which is central to the principle of the due process of law and which requires that there should be no discrimination in the application of the law. The Appeals Chamber considered that "Article 21 and the principle it embodies prohibits discrimination in the application of the law based on impermissible motives such as, *inter alia*, race, colour, religion, opinion, national or ethnic origin".⁴⁷ The Prosecutor, in exercising her discretion under the Statute in the investigation and indictment of accused before the Tribunal, is subject to the principle of equality before the law and to the requirement of non-discrimination.

IV. DISCUSSION

1. Preliminary Remarks

19. The Chamber notes that allegations similar to those in the Motion and Addendum – specifically the existence of bias (in various organs of the Tribunal) based on political or other grounds – have been raised on many occasions by the Accused since he was taken into custody.⁴⁸ In November 2007, the Accused requested the admission of a document containing 53,181 words (Submission 338), thereby exceeding by 50,181 words, the limit authorized by the regulations in force before the Tribunal.⁴⁹ Consequently, this document, which the Registry received on 13 November 2007, was not formally registered. The Chamber recalls that a party must request leave to exceed the established word limits and explain the exceptional

⁴⁶ *Id.*, paras. 614-616.

⁴⁷ *Id.*, para. 605.

⁴⁸ See Case No. IT-03-67-PT, Decision on Motion for Disqualification, 10 June 2003; Case No. IT-03-67-PT, Decision on Request to Exclude the Prosecutor of the International Tribunal, Carla Del Ponte, 2 December 2004; Case No. IT-03-67-PT, Decision on Motion for Disqualification of the Appeals Chamber, 9 December 2004; see also Case No. IT-03-67-PT, Submission 16, on which Trial Chamber II ruled on 12 September 2005.

⁴⁹ Practice Direction on the Length of Briefs and Motions (IT/184, Rev. 2), 16 September 2005, Article 1 (C) (5) ("Practice Direction"). See also Case No. IT-03-67-PT, Decision Amending the Criteria for the Filing of Submissions from the Accused, 17 May 2007, p. 3.

circumstances justifying the filing of such a submission.⁵⁰ Such was not the case here, and exceeding the word limit by more than 50,000 words cannot be justified by the flexibility the Chamber has shown in the past vis-à-vis the parties in light of the issues raised.⁵¹ The Registry shall immediately return Submission 338 to the Accused.

20. The Chamber notes that in this case, the present Motion contains 3,947 words, thus exceeding the authorized word limit by nearly 1,000 words. No request for leave to exceed this limit was attached to the Motion and the application of the regulations in force before the Tribunal would require that the Motion be dismissed. Nonetheless, considering that the Motion only slightly exceeds the word limit and the gravity of the allegations made by the Accused, the Chamber considers that there is good cause to examine the said Motion. The Chamber recalls nonetheless that the flexibility it has shown in this case cannot apply in all circumstances, and in the absence of the requisite justification, the Chamber will duly return the motions whose filing is sought when they exceed the authorized limit of 3,000 words.

2. Examination of the Motion and the Addendum

21. The Chamber first notes that the burden of proof here rests on the Accused since he alleges the existence of discriminatory prosecution against him and questions the manner in which the Prosecutor used her discretionary power in the prosecution of him. The Accused must demonstrate that the Prosecutor abused her discretionary power, specifically as regards (1) the fact that the decision to prosecute him was based on impermissible motives and (2) that the Prosecution did not prosecute similarly situated accused persons.

22. In the Motion, the arguments of the Accused on the first point are based entirely on the following sentence from the book published by Ms Del Ponte, who was the Prosecutor of the Tribunal at the time the Accused was indicted. “Đinđić requested only one thing in connection with Šešelj: ‘take him away and do not bring

⁵⁰ Practice Direction, Article 1 (C) (7).

⁵¹ For example, Submission 359 contained 4,265 words, Submission 250 contained 11,562 words, Submission 314 contained 15,267 words, and Submission 367 contained 30,487 words.

him back’.”⁵² The Chamber notes that prior to the filing of the Addendum, the Accused’s main argument in support of the serious allegations made in his Motion was limited to this sentence and his interpretation of it, specifically that Ms Del Ponte herself admitted in her writing that she received a “request” from the former Prime Minister Đindić to remove the Accused from the political landscape since he represented a political obstacle.⁵³ Two months after the filing of the Motion pending before the Chamber, two newspaper articles were published, which the Accused presents as additional evidence to substantiate the allegations contained in his Motion.

23. The Chamber has examined all of the evidence offered by the Accused in support of the allegations of discriminatory prosecution, and with regard to the allegations raised first in the Motion, the Chamber proposes below an unofficial translation of the passage in question in order to better understand the allegedly controversial statements of Ms Del Ponte:

“A few days before our meeting held on 17 February 2003, Zoran Đindić hurt his foot playing football. It seemed strange to me: the Prime Minister of a country...playing football...a tackle on him so hard that it broke his ankle...that accident would slow him down. He came to meet me at his office door, using crutches. His foot was in a plaster cast. I was impatient as ever for news from Đindić about fugitives of the Tribunal. Šljivančanin, the Serbian commander who supervised the fall of Vukovar: the police were after him. Vojislav Šešelj, the leader of the Serbian Radical Party, who proclaimed himself *vojvoda* /military leader/, who once urged his black shirts to gouge out the eyes of the Croats using a rusty spoon, will soon be handed over to the Tribunal (Šešelj in fact surrendered voluntarily a week later promising to ‘destroy this infamous Tribunal’.) Đindić had only one request as regards Šešelj: “take him away and do not bring him back”. And he warned me that ‘Šešelj’s antics’ in the courtroom could cause even worse confusion than Milošević’s hard-headedness.”⁵⁴

⁵² Motion, p. 3.

⁵³ *Id.*, p. 6.

⁵⁴ Carla Del Ponte, *La Caccia – io e i criminali di Guerra* (Milano: Giangiacomo Feltrinelli Editore, 2008), p. 187 (unofficial translation of the Chamber from the Italian version).

“Qualche giorno prima del nostro incontro del 17 febbraio 2003, Zoran Djindjic si è fatto male a un piede. Stava giocando a pallone. Mi sembra una cosa strana: il primo ministro di un paese... che gioca a calcio... un intervento su di lui così pesante da fratturargli la caviglia... un incidente che lo rallenterà. Mi viene incontro sulla porta del suo ufficio sostenendosi su un paio di stampelle. Ha il piede ingessato. Sono ansiosa, come sempre, di sentire le novità di Djindjic sui ricercati del Tribunale. Sljivančanin, il comandante serbo che ha sovrinteso alla caduta di Vukovar: la polizia gli sta addosso. Vojislav seselj, il capo del Partito radicale serbo che si è autoproclamato “duce”, il quale una volta ha esortato le sue camicie nere a cavare gli occhi ai croati con un cucchiaino arrugginito, sarà presto consegnato alla custodia del Tribunale. (Seselj in effetti si costituirà spontaneamente una settimana

The Chamber first points out that it has taken into account the Accused's urgent motion to obtain the translation of passages related to him from Ms Del Ponte's book, but holds that it need not grant this request. Indeed, the Chamber considers that since it has the ability to examine itself the exact content of the contentious statements concerning the Accused, as referred to in the Motion, the Tribunal's resources need not be monopolized in order to obtain the translation into one of the official languages of the Tribunal, noting that the Chamber itself was able to obtain a partial translation of the relevant passages.

24. The Chamber next notes that the sentence on which the Accused bases his Motion is presented out of context and that the Accused fails to specify that this statement was made during a meeting which took place on 17 February 2003, two important facts in this case.

25. The Accused rests his argument on the following premises: at the time of the meeting recounted in "*La Caccia*", the Accused since 2002 was becoming increasingly famous on the political scene, whereas Prime Minister Đinđić's term was ending in March 2003. The Accused thus concludes that the preparation of an arrest warrant against him is the outcome of a "conspiracy" intended to bring about his removal from the political scene and his "death" in politics. However, the content of what was said may be better understood when placing the contentious sentence back into the context from which it was taken. Furthermore, the Chamber notes that it is not unusual for the Prosecutor of the Tribunal to meet high-ranking political officials in the framework of cooperation with the Tribunal, which happened in this case since Ms Del Ponte notes that she was "impatient as ever for news from Đinđić about fugitives of the Tribunal". Finally, the Indictment was filed with the Registry by the Prosecutor of the Tribunal on 15 January 2003 and confirmed by a Judge of the Tribunal on 14 February 2003,⁵⁵ that is, just a few days *before* Ms Del Ponte's meeting with Mr Đinđić referenced in "*La Caccia*", which is in accordance with the procedures set out in Article 19 (1) of the Statute and Rule 47 (E) of the Rules,

dopo, promettendo di "distruggere l'infame Tribunale". Djindjic ha una sola richiesta a proposito di Seselj: "Prenditelo e non rimandarcelo più. E mi avverte che le sceneggiate di Šešelj possono creare in aula più disturbo dell'ostinazione di Milošević".

offering all the guarantees for the instigation of justified prosecutions set out within the context of the procedure for the confirmation of an indictment.⁵⁶

26. On the sole basis of the Motion and in light of the sequence of events, the statements allegedly made by Mr Đinđić on 17 February 2003, as recounted in the Motion, could not, at first glance, have influenced the decision to establish an indictment against the Accused as he initially submitted. Accordingly, the Chamber considers that the Motion in no way demonstrates, in the light of the passage from the book, that the decision to prosecute the Accused was based on impermissible motives on the part of the Prosecutor. The Chamber nonetheless examined the Addendum in order to determine whether the Accused presents evidence demonstrating the existence of discriminatory prosecution.

27. The Addendum is based on two newspaper articles recently published in a Belgrade daily. The alleged account of these purported meetings, which took place after the filing of the Motion and are offered as evidence in support of the allegations contained therein, relates statements following up the comment by Mr Đinđić as set forth by Ms Del Ponte, which form the basis for the allegations of discriminatory prosecution presented in the Motion. The Chamber has no information regarding the authenticity of the information contained in these articles and cannot, as requested by the Accused, implement a measure so disproportionate as to withdraw the Indictment in this case on the basis of such newspaper articles. The Chamber will nonetheless address the issues related to the publication of the two articles from the Addendum in a separate order.

28. The allegations of the Accused against Ms Del Ponte, who herself prepared and signed the Indictment against him and against other persons who are deceased and thus unable to answer to such charges, are extremely serious and, as a result, are addressed by the Chamber with the utmost care. Considering the very gravity of these allegations and their consequences, should they prove to be founded, such allegations must be substantiated by sufficient evidence to rebut the presumption that the Prosecutor exercised the prosecutorial functions conferred upon her by the Statute

⁵⁵ Confirmation of Indictment and Order for the Warrant for Arrest and Surrender, filed 14 February 2003.

regularly. Such is not the case here, since the Accused limits himself to making very serious allegations on the basis of one sentence taken out of any context and two newspaper articles which offer no concrete evidence.

29. The Chamber concludes that the Accused has failed to establish that Ms Del Ponte, at the time she exercised her functions as Prosecutor of the Tribunal, had indicted the Accused or continued to prosecute him for discriminatory or otherwise unlawful or improper motives. It is therefore unnecessary to determine whether similarly situated persons were not prosecuted. The Chamber will limit itself to observing that many high-ranking political officials from the former Yugoslavia, some of whom are even said to be part of the joint criminal enterprise alleged in the Indictment, were moreover indicted and/or arrested by the Tribunal, and the Accused is not, contrary to his assertion, the only individual in such a position of authority charged with individual criminal responsibility.⁵⁷

V. DISPOSITION

30. For these reasons, in accordance with Rule 54 of the Rules, the Chamber

DENIES the Motion of the Accused and its Addendum;

ORDERS the Registry to return Submission 338 to the Accused; and

RULES that the issues related to the publication of the two articles from the Addendum shall be addressed in a separate order.

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

⁵⁶ See para. 15 *supra*.

⁵⁷ For example an indictment was issued against Radovan Karadžić and Ratko Mladić on 15 July 1995 (IT-95-18), Momčilo Krajišnik on 21 February 2000 (IT-00-39), Slobodan Milošević on 23 October 2002 (IT-02-54) and against Biljana Plavšić on 5 April 2000 (IT-00-40).

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this eighteenth day of September 2008
At The Hague
The Netherlands

[Seal of the Tribunal]