



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: 6 November 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:** 6 November 2008

**THE PROSECUTOR**

**v.**

**VOJISLAV ŠEŠELJ**

**PUBLIC DOCUMENT**

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**DECISION ADMITTING THE PRIOR STATEMENTS OF LJUBIŠA  
PETKOVIĆ PURSUANT TO RULE 92 *QUATER* OF THE RULES**

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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”);

***PROPRIO MOTU***

**NOTING** Rule 92 *quater* (A) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) that allows a Trial Chamber to admit the evidence of a person in the form of a written statement “who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally” if the Chamber: “(i) is satisfied of the person’s unavailability as set out above; and (ii) finds from the circumstances in which the statement was made and recorded that it is reliable”;<sup>1</sup>

**NOTING** the three statements given by Ljubiša Petković to the Office of the Prosecutor (“Prosecution”) between 2002 and 2006 within the scope of proceedings instituted against Vojislav Šešelj (“Statements” and “Accused”, respectively);<sup>2</sup>

**NOTING** also the statement given by Ljubiša Petković in the presence of his lawyer, Zoran Stojković, in the context of an interview with the Prosecution that took place between 15 and 18 September 2003, during which Ljubiša Petković was heard as a suspect (Statement by Ljubiša Petković as a Suspect”);<sup>3</sup>

**CONSIDERING** that twice, unsuccessfully, the Chamber ordered Ljubiša Petković to appear to testify *viva voce*, which led the Chamber to prosecute him for contempt pursuant to Rule 77 of the Rules;<sup>4</sup>

<sup>1</sup> See also Rule 92 *quater* (B) that provides “[if] the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.”

<sup>2</sup> Statement given by Ljubiša Petković to the Prosecution on 13, 14, 15 and 18 December 2002 (“2002 Statement”); Statement given by Ljubiša Petković to the Prosecution on 10 and 13 February 2003 (the Chamber notes the apparent error on the cover of the statement indicating that the statement was given on 10 December) (“2003 Statement”); Statement given by Ljubiša Petković pursuant to Rule 89 (F) of the Rules on 17 and 18 June 2006 (“2006 Statement”).

<sup>3</sup> A retranscription of the videotaped interview was compiled in BCS and English.

<sup>4</sup> See *In the Matter of Ljubiša Petković*, Case No. IT-03-67-R77.1, Redacted Version of Judgement Pronounced on 11 September 2008, 11 September 2008, paras. 6-18.

**CONSIDERING** moreover that on 7 January 2008 the Chamber denied the Prosecution request to hear Witness VS-011 – the pseudonym granted to Ljubiša Petković – pursuant to Rule 92 *ter* of the Rules, finding that it was important for witnesses close to the Accused to testify *viva voce* “due to their fundamental importance and in view of a better understanding of the case presented before the Chamber”;<sup>5</sup>

**CONSIDERING** that during his testimony on 3 September 2008 within the scope of proceedings instituted against him pursuant to Rule 77 of the Rules for failing to comply with a summons issued by the Chamber, Ljubiša Petković stated that “in a normal situation, it would be an honour and a pleasure [for him] to testify before the Tribunal and tell the truth as he knows it”;<sup>6</sup>

**CONSIDERING** that Dr Vera Petrović, a neuropsychiatrist working in the Detention Unit of the Tribunal,<sup>7</sup> conducted a medical examination by order of the Chamber<sup>8</sup> and concluded that Ljubiša Petković was incapable of testifying owing to the state of his mental health;<sup>9</sup>

**CONSIDERING** that the Chamber thus finds that Ljubiša Petković is not currently “available” within the meaning of Rule 92 *quater* of the Rules and that nothing in Rule 92 *quater* indicates that the unavailability of the witness must be permanent;

**CONSIDERING** that the Statements were signed and reread by Ljubiša Petković in a language he understands<sup>10</sup> and that Zoran Stojković, a lawyer, was present on the last day the 2002 Statement was given and during the September 2003 videotaped interview of Ljubiša Petković, as a suspect, by the Prosecution;

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<sup>5</sup> 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, confidential, 7 January 2008 (public redacted version filed on 21 February 2008), paras. 40, 42.

<sup>6</sup> Hearing of 3 September 2008, Court transcript in French, 132-133.

<sup>7</sup> Dr Vera Petrović regularly examines the detainees in the Tribunal's Detention Unit and has prepared confidential and *ex parte* reports in several cases before the Tribunal.

<sup>8</sup> *Ordonnance aux fins d'expertise médicale d'un témoin*, confidential and *ex parte*, 11 September 2008.

<sup>9</sup> Registry Submission Pursuant to Rule 33 (B) on the State of Health of a Witness, confidential and *ex parte*, 19 September 2008.

<sup>10</sup> The 2002 and 2003 Statements were signed by Ljubiša Petković only in BCS. Furthermore, Zoran Stojković also signed the BCS version of the 2002 Statement. All the pages of the 2006 Statement were signed in English and in BCS.

**CONSIDERING** that the Chamber thus finds at this stage that the Statements and the Statement of Ljubiša Petković as a Suspect present sufficient indicia of reliability;

**CONSIDERING** consequently that the Chamber finds that it is in the interests of justice and necessary in order to ascertain the truth, at this stage of the proceedings and after having tried to obtain his *viva voce* testimony, to admit the Statements of Ljubiša Petković as well as the Statement of Ljubiša Petković as a Suspect, pursuant to Rule 92 *quater* of the Rules;

**CONSIDERING** nevertheless that if Ljubiša Petković were to come and testify in the future in the present case, the present Decision would become moot since the underlying conditions of Ljubiša Petković's incapability to testify would no longer be met;

**FOR THE FOREGOING REASONS**

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

**DECIDES** to admit the statements of Ljubiša Petkovic identified below:

- (i) The statement of 13, 14, 15 and 18 December 2002;
- (ii) The statement of 10 and 13 February 2003;
- (iii) The Statement of Ljubiša Petković as a Suspect dated from 15 to 18 September 2003 (both the video recording of the interview and its written retranscription); and
- (iv) The statement of 17 and 18 June 2006;

**ORDERS** the Prosecution to provide the Chamber, within seven days of this Decision, the documents signed by Ljubiša Petković and discussed when he gave the Statements and the Statement of Ljubiša Petković as a Suspect, which have not yet been admitted through other witnesses, in particular among the documents with the following references:

- (i) In the 2002 Statement: LL-PPS-TS-VK 02; LL-PPS-TS-VK-01; LL-PPS-TS-VK-21-24; LL-PPS-TS-VK-25; LL-PPS-TS-VK 12; LL-PPS-TS-VK 13; LL-PPS-TS-VK 15; LL-PPS-TS-VK 05 to 08; LL-PPS-TS-VK 09; LL-PPS-TS-VK 10; LL-PPS-TS-VK 11; LL-PPS-TS-VK 14; LL-PPS-TS-VK 03; LL-PPS-TS-VK 04; LL-PPS-TS-VK 16; LL-PPS-TS-VK 17; LL-PPS-TS-VK 26; LL-PPS-TS-VK 18; LL-PPS-TS-VK 19; LL-PPS-TS-VK 20; LL-PPS-TS-VK-27;
- (ii) In the 2003 Statement: PPS-LP-VK-06; PPS-LP-DT-01; PPS-LP-VK-11; PPS-LP-VK-12; PPS-LP-VK-13; PPS-LP-VK-02; PPS-LP-VK-03; PPS-LP-VK-04; PPS-LP-VK-05; PPS-LP-VK-09; PPS-LP-VK-14; PPS-LP-VK-10;
- (iii) In the 2006 Statement: 307-1277;<sup>11</sup> 0307-3427; 0309-1349; 0309-1340; 0309-1341; 0339-4888ET; 0339-4889ET; 0339-4890ET; 0339-4891ET; 0339-4895ET; 0339-4986ET; 0339-4897ET; 0339-4911.

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

/signed/  
Jean-Claude Antonetti  
Presiding Judge

Done this sixth day of November 2008  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

<sup>11</sup> The ERN references in the present Decision are those of the document in English.