



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: 4 November 2008

Original: English

IN TRIAL CHAMBER III

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

Registrar: Mr. Hans Holthuis

Decision of: 4 November 2008

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION ON THE ACCUSED'S SUBMISSION 403

Office of the Prosecutor

Mr. Daryl Mundis
Ms. Christine Dahl

The Accused

Mr. Vojislav Šešelj

I. INTRODUCTION

1. **TRIAL CHAMBER III** (“Trial 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 seised of the Accused’s submission numbered 403, filed on 6 October 2008 (“Motion”),¹ which requests that the Trial Chamber reconsider its “Decision on the Prosecution’s Oral Motion Seeking the Admission into Evidence of Witness Nebojša Stojanović’s Three Witness Statements” rendered on 11 September 2008 (“11 September 2008 Decision”).²

II. BACKGROUND

2. The Trial Chamber notes that the procedural history and reasoning underlying the 11 September 2008 Decision are detailed therein and that only their most salient aspects need be presently recalled.

3. On 22 and 23 July 2008, the Prosecution moved orally during the testimony of Nebojša Stojanović (“Mr. Stojanović”) to admit into evidence three of his previous written statements (“Written Statements”), both to impeach Mr. Stojanović’s credibility and for the truth of their contents.³ The Accused orally opposed the Prosecution’s motion⁴ and the Trial Chamber opted to defer its determination as to whether to admit the Written Statements into evidence.⁵

4. In its 11 September 2008 Decision, the Trial Chamber admitted the Written Statements into evidence, both to impeach Mr. Stojanović’s credibility and for the truth of their contents.⁶ The Trial Chamber found that the Written Statements were clearly relevant to the charges in the Indictment⁷ and that they provided sufficient indicia of reliability.⁸ In particular, the Trial Chamber noted that: (i) the formalities surrounding the Written Statements belied Mr. Stojanović’s assertion that they did not reflect the information he provided during his interviews with the Prosecution;⁹ (ii) a

¹ Original in BCS with an English translation entitled “Submission 403 – Professor Vojislav Šešelj’s Motion for Review of the Trial Chamber’s Decision on the Prosecution’s Oral Motion Seeking the Admission into Evidence of Witness Nebojša Stojanović’s Three Written Statements”, filed 6 October 2008 (dated 26 September 2008) (“Motion”).

² Decision on the Prosecution’s Oral Motion Seeking the Admission into Evidence of Witness Nebojša Stojanović’s Three Witness Statements, 11 September 2008 (“11 September 2008 Decision”).

³ Hearing of 22 July 2008, T. 9704-9706; Hearing of 23 July 2008, T. 9785-9786.

⁴ Hearing of 22 July 2008, T. 9706-9707.

⁵ Hearing of 22 July 2008, T. 9707-9708; Hearing of 23 July 2008, T. 9786.

⁶ 11 September 2008 Decision, para. 19.

⁷ *Id.*, para. 12.

⁸ *Id.*, para. 13.

⁹ *Id.*

member of the Office of the Prosecutor testified as to the circumstances under which the Written Statements were taken;¹⁰ (iii) Mr. Stojanović was given an opportunity to explain the inconsistencies between the Written Statements and his testimony in light of the questions posed to him by the Parties and the Trial Chamber;¹¹ and (iv) the Accused was able to cross-examine the member of the Office of the Prosecutor as well as Mr. Stojanović regarding the Witness Statements.¹² The Trial Chamber further noted that “the admission of the Written Statements into evidence in no way prejudices what weight, if any, they will be accorded by the Trial Chamber.”¹³

III. SUBMISSIONS

5. In his Motion, the Accused requests that the Trial Chamber reconsider its 11 September 2008 Decision and issue an order expunging the Written Statements from evidence.¹⁴ The Accused argues that the Written Statements should not have been admitted into evidence, for any purpose, given that Mr. Stojanović also provided *viva voce* testimony.¹⁵ Further, the Accused contends that by admitting the Written Statements, the Trial Chamber impermissibly “made an assessment of their relevance and probative value, and determined the weight of the evidence.”¹⁶ The Accused concludes that the Trial Chamber abused its discretion and that the admission of the Written Statements caused him “serious prejudice”.¹⁷

6. The Prosecution orally responded during the hearing of 15 October 2008 that the Motion failed to present any facts warranting reconsideration and failed to show that the Accused had been unfairly prejudiced by the 11 September 2008 Decision.¹⁸

IV. APPLICABLE LAW

7. According to the jurisprudence of the Tribunal, the Trial Chamber has inherent discretionary power to reconsider a previous decision if there has been a clear error of reasoning or if particular

¹⁰ *Id.*

¹¹ *Id.*, para. 15.

¹² *Id.*, paras 14, 15, fn. 38.

¹³ *Id.*, para. 18.

¹⁴ Motion, p. 7.

¹⁵ *Id.*, pp. 3-4.

¹⁶ *Id.*, p. 3.

¹⁷ *Id.*, pp. 3, 5-6.

¹⁸ Hearing of 15 October 2008, T. 10800-10801.

circumstances exist that justify reconsideration in order to prevent an injustice, such as where new facts or arguments have arisen since the issuance of a decision.¹⁹

V. DISCUSSION

8. Though the usual practice of this Tribunal is not to admit witnesses' prior written statements if they also provide *viva voce* testimony, no provision of the Rules of Procedure and Evidence ("Rules") prohibits the Chamber from doing so. In fact, Rule 89(C) of the Rules entitles a Chamber to "admit any relevant evidence which it deems to have probative value" provided that the rights of an accused to a fair trial are ensured.²⁰ The Trial Chamber recalls that it granted the Prosecution's request to treat Mr. Stojanović as a hostile witness²¹ and that the Written Statements provided indicia of reliability.²² The jurisprudence of this Tribunal is clear that in these circumstances, a witness's prior statements may be admitted into evidence, either to impeach the witness's credibility or for the truth of their contents, even where the witness also provided *viva voce* testimony.²³ The Trial Chamber finds that the Accused's contention to the contrary — that *viva voce* testimony bars the admission of previous statements — is incorrect as a matter of law.

9. Further, the Trial Chamber notes that the Accused's additional contention that it impermissibly determined the weight to be given to the Written Statements is disavowed by the 11 September 2008 Decision, which explicitly states that "the admission of the Written Statements into evidence in no way prejudices what weight, if any, they will be accorded by the Trial Chamber."²⁴ As detailed *supra*, the Trial Chamber found that the Written Statements were clearly relevant to the charges in the Indictment and that they provided indicia of reliability.²⁵

10. Thus, the Accused's legal contentions fail to demonstrate that the Trial Chamber committed a clear error of reasoning by admitting the Written Statements.

11. Moreover, the Accused has not identified any new facts or arguments that have arisen since the issuance of the 11 September 2008 Decision.

¹⁹ *Prosecutor v. Rasim Delić*, IT-04-83-T, Decision on the Prosecution's Motion for Reconsideration of the Chamber's Decision on Admission of Documentary Evidence, 16 February 2008, para. 9.

²⁰ *Prosecutor v. Rasim Delić*, IT-04-83-AR73.1, Decision on Rasim Delić's Interlocutory Appeal Against Trial Chamber's Oral Decisions on Admission of Exhibits 1316 and 1317, 15 April 2008, para. 20. *See also* Rule 89(D) of the Rules.

²¹ Hearing of 22 July 2008, T. 9704-9706.

²² *Id.*, para. 13.

²³ *Prosecutor v. Vujadin Popović et al.*, IT-05-88-AR73.3, Decision on Appeals Against Decision on Impeachment of a Party's Own Witness, 1 February 2008, paras 31-32; *Prosecutor v. Fatmir Limaj et al.*, IT-03-66-T, Decision on the Prosecution's Motions to Admit Prior Statements as Substantive Evidence, 25 April 2005, paras 18, 21, 30.

²⁴ 11 September 2008 Decision, para. 18.

²⁵ *See* para. 4 *supra*.

12. In sum, the Accused does not establish that the Trial Chamber committed a clear error of reasoning or that particular new circumstances exist that justify reconsideration of the 11 September 2008 Decision.

VI. DISPOSITION

13. Accordingly, the Trial Chamber, pursuant to Rules 54 and 89 of the Rules, **DENIES** the Motion.

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



Judge Jean-Claude Antonetti
Presiding

Dated this fourth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]