

UNITED
NATIONS



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: 20 October 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: 20 October 2008

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION'S MOTION TO ADMIT THE
STATEMENT OF DOCTOR VESNA BOSANAC PURSUANT TO RULE
92 TER OF THE RULES OF PROCEDURE AND EVIDENCE**

Office of the Prosecutor

Mr. Daryl Mundis
Ms. Christine Dahl

The Accused

Mr. Vojislav Šešelj

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”);

BEING SEISED OF the Prosecution’s motion to admit the written statement of Dr. Vesna Bosanac pursuant to Rule 92*ter* of the Rules of Procedure and Evidence (“Rules”), filed 3 October 2008 (“Motion”);¹

NOTING the Trial Chamber decision of 16 June 2008 (“16 June 2008 Decision”),² wherein the Trial Chamber granted the Prosecution’s request to add Dr. Vesna Bosanac to its Rule 65*ter* witness list³ while indicating that “Dr. Vesna Bosanac is in a unique position to provide significant evidence regarding the events in Vukovar and that the use of Rule 92*ter* would be inappropriate in these circumstances”;⁴

NOTING that Dr. Vesna Bosanac is currently scheduled to testify before the Trial Chamber during the week of 4 November 2008;

NOTING that the Prosecution Motion now requests the admission of Dr. Vesna Bosanac’s written statement dated 23 September 2008 (“Statement”),⁵ pursuant to Rule 92*ter* of the Rules, on the basis that: (i) other witnesses have, and will, also testify as to whether the individuals taken from the Vukovar hospital on 20 November 1991 were later found in the Ovčara mass grave;⁶ (ii) the Trial Chamber in the *Mrkšić* case established the identities of those taken from the Vukovar hospital and those found in the Ovčara mass grave;⁷ (iii) the Statement does not directly concern the acts and conduct of the Accused;⁸ (iv) Dr. Vesna Bosanac has testified under oath on four separate occasions before the Tribunal;⁹ and (v) that the admission of the Statement pursuant to Rule 92*ter* of the Rules would be in the interest of judicial economy;¹⁰

¹ Original in French entitled “Requête du parquet aux fins d’admission de la déclaration écrite du docteur Vesna Bosanac en application de la Règle 92*ter*”, public with a confidential annex, 3 October 2008 (“Motion”).

² Decision on Prosecution’s Motion for Leave to Amend its Witness List and Exhibit List, 16 June 2008 (“16 June 2008 Decision”).

³ 16 June 2008 Decision, para. 27.

⁴ *Id.*, para. 28.

⁵ The Statement is attached as confidential Annex A to the Motion.

⁶ Motion, paras 12-13; *see also* confidential Annex B to the Motion.

⁷ Motion, para. 14.

⁸ *Id.*, para. 16.

⁹ *Id.*, para. 17.

¹⁰ *Id.*, paras 17-19.

NOTING that in the event the Statement is admitted pursuant to Rule 92ter, the Prosecution further requests that the names of Dr. Vesna Bosanac's sons be redacted therein;¹¹

NOTING that the Accused indicated by oral response his opposition in principle to Rule 92ter witness testimony, including that of Dr. Vesna Bosanac, and his refusal to cross-examine Rule 92ter witnesses;¹²

CONSIDERING that pursuant to Rule 92ter of the Rules, the Trial has the power to admit, in whole or in part, written statements, provided that the conditions set forth in Rule 92ter(A) of the Rules are fulfilled;¹³

RECALLING that "whether or not to allow witness testimony pursuant to Rule 92ter is a matter ultimately left to [the Trial Chamber's] discretion";¹⁴

CONSIDERING that Dr. Vesna Bosanac is neither an "insider witness" nor is she linked to a fundamental issue raised by the Indictment against the Accused¹⁵ — rather, her Statement focuses primarily on the events at the Vukovar hospital on 20 November 1991 and does not directly concern the acts and conduct of the Accused;¹⁶

CONSIDERING that witnesses other than Dr. Vesna Bosanac, namely Dr. Strinović and certain Ovčara survivors,¹⁷ have or will also testify as to the overlap between those taken from the Vukovar hospital and those found in the Ovčara mass grave;

CONSIDERING that the Accused's stated refusal to cross-examine Dr. Vesna Bosanac regarding her Statement is of his own choosing but that she remains subject to the Judges' questioning;

CONSIDERING that permitting Dr. Vesna Bosanac to testify pursuant to Rule 92ter furthers the expeditiousness and efficiency sought by this Rule;

¹¹ *Id.*, para. 25.

¹² Hearing of 14 October 2008, T. 10690-10692.

¹³ Namely, that (i) the witness is present in court; (ii) the witness is available for cross-examination and any questioning by the Judges; and (iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

¹⁴ 16 June 2008 Decision, para. 28.

¹⁵ See Decision on the Prosecution's Consolidated Motion Pursuant to Rule 89(F), 92Bis, 92Ter and 92Quater of the Rules of Procedure and Evidence, confidential, 14 January 2008 (original in French dated 7 January 2008), paras 39-40. A public redacted version was issued on 21 February 2008.

¹⁶ See Hearing of 14 October 2008, T. 10691.

¹⁷ See confidential Annex B to the Motion (listing witnesses who have or will testify as to the events at the Vukovar hospital and/or in Ovčara).

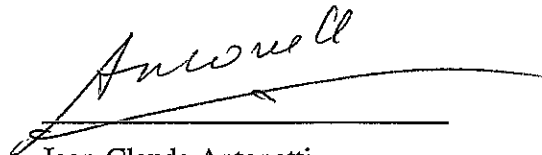
FURTHER CONSIDERING that, in light of the foregoing, the Trial Chamber has re-examined the need for Dr. Vesna Bosanac to testify *viva voce*;

PURSUANT TO Rules 54 and 92*ter* of the Rules,

HEREBY RULES that:

- (i) Dr. Vesna Bosanac will testify during the week of 4 November 2008 pursuant to Rule 92*ter* of the Rules on the basis of her Statement;
- (ii) the Prosecution is granted 30 minutes to complete the formal requirements of Rule 92*ter* of the Rules in view of admitting her Statement;
- (iii) the Accused is granted 3 hours to cross-examine Dr. Vesna Bosanac, if he so wishes;
- (iv) the Statement will only be admitted following the completion of the formal requirements of Rule 92*ter* of the Rules; and
- (v) the Trial Chamber will rule upon the Prosecution's request for the redaction of the names of Dr. Vesna Bosanac's sons if, and when, her Statement is admitted into evidence.

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



Jean-Claude Antonetti
Presiding

Dated this twentieth day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]