



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: 12 December 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: 12 December 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION MOTION TO APPLY RULE 92 *TER* OF
THE RULES OF PROCEDURE AND EVIDENCE TO WITNESS ISAK GAŠI**

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 a motion by the Prosecution filed confidentially on 19 November 2008 to hear Witness Isak Gaši (VS-1033) pursuant to Rule 92 *ter* of the Rules of Procedure and Evidence of the Tribunal (“Rules”);¹

NOTING the Chamber’s decision of 7 January 2008, in which the Chamber decided that for certain witnesses, including Witness Isak Gaši, to deny the Prosecution motion to admit transcripts of testimony in other cases pursuant to Rule 92 *ter*, “since there is no showing of relevance and due to their excessive number of pages”;²

NOTING nevertheless that the Chamber decided for these witness that it could “take into consideration a future request based on Rule 92 *ter* of the Rules to admit new statements tailored specifically to the requirements of the case against the Accused”;³

CONSIDERING that on 4 December 2008, the Accused reiterated orally his objection to the principle of using Rule 92 *ter*, including for Witness Isak Gaši;⁴

CONSIDERING that the written statement of Witness Isak Gaši dated 12 November 2008 primarily refers to crimes committed in Brčko and in the Luka camp in 1992, including those by members of the Serbian Radical Party;

CONSIDERING that the Chamber notes that Witness Isak Gaši would be the first witness to testify about crimes for which the Accused could be held responsible within a consistent pattern of conduct;⁵

¹ Prosecution Motion for the Admission of Written Statement of Witness VS-1033 pursuant to Rule 92 *ter*, confidential, 19 November 2008.

² 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, para. 52.

³ *Id.*, para. 53.

⁴ Hearing of 4 December 2008, T(F), 12691.

⁵ See Chamber I decision, Decision on the Application of Rule 73 *bis*, 8 November 2006; see also the Appeals Chamber decision, Decision on Appeal against the Trial Chamber’s Oral Decision of 9 January 2008, 11 March 2008.

CONSIDERING that the Chamber consequently holds that it is in the interests of justice to hear this witness *viva voce* owing to his importance and in view of a better understanding of the case before the Chamber, especially concerning the presence of Serbian Radical Party members in the Luka camp and possible crimes committed by them;

FOR THE FOREGOING REASONS

DENIES the Prosecution Motion and **DECIDES**

- (i) to hear Witness Isak Gaši *viva voce*; and
- (ii) to allocate one hour to the Prosecution and to the Accused for this witness.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this twelfth day of December 2008
At The Hague
The Netherlands

[Seal of the Tribunal]