



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: 30 November 2007

ENGLISH

Original: French

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**IN TRIAL CHAMBER III**

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

**Registrar:** Mr Hans Holthuis

**Decision of:** 30 November 2007

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

***PUBLIC DOCUMENT***

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**DECISION ON ANTHONY OBERSCHALL'S STATUS AS AN  
EXPERT**

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**The Office of the Prosecutor:**

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 the submission of the Expert Report by Anthony Oberschall ("Submission")<sup>1</sup> by the Office of the Prosecutor ("Prosecution"), filed on 21 March 2006 and the Expert Report by Anthony Oberschall attached to the Submission as Annex A ("Expert Report");<sup>2</sup>

**NOTING** the disclosure of the first *addendum* by the Prosecution filed on 24 May 2006<sup>3</sup> and a second *addendum* filed on 19 February 2007;<sup>4</sup>

**NOTING** the Notice by Vojislav Šešelj ("Accused") pursuant to Rule 94*bis*(B) of the Rules of Evidence and Procedure ("Rules"), presented by the Accused on 12 April 2007 and filed on 26 July 2007 ("Notice"),<sup>5</sup> in application of the Decision on the Accused's Third Motion to Admit Submissions 210, 211 and 212 (Number 268) issued on 26 July 2007 by the pre-trial Judge in charge of the case;<sup>6</sup>

**NOTING** the response to the second *addendum* presented by the Accused on 26 November 2007 ("Response of 26 November");<sup>7</sup>

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<sup>1</sup> "Prosecution Submission of the Expert Report of Anthony Oberschall."

<sup>2</sup> The Submission also contained Annex B (*curriculum vitae* of Anthony Oberschall), Annex C (*curriculum vitae* of Biljana Belamarić-Wilsey) and Annex D (List of Material).

<sup>3</sup> "Prosecution's Addendum to the Expert Report of Anthony Oberschall."

<sup>4</sup> "Prosecution's Second Addendum to the Expert Report of Anthony Oberschall with Annexes A and B."

<sup>5</sup> "Official Notice by Prof Dr Vojislav Šešelj Concerning the Expert Report by Anthony Oberschall."

<sup>6</sup> "Decision on the Accused's Third Motion to Admit Submissions 210, 211 and 212 (Number 268)", 26 July 2007, p. 2. Before that, in its Decision of 12 July 2006, Chamber I ordered an extension allowing the Accused until 1 September 2006 to file his notice, but sent it back on 22 November 2006 due to its extensive length.

**NOTING** the supplement to the Expert Report of Dr Anthony Oberschall ("Supplement") filed by the Prosecution on 29 November 2007;<sup>8</sup>

**CONSIDERING** that the Chamber will not take into consideration the Response of 26 November 2007 presented by the Accused more than six months after the second *addendum* was sent to him in a language he understands<sup>9</sup> and consequently outside the 30-day-limit stipulated in Rule 94*bis*(B) of the Rules;

**CONSIDERING** that the Chamber will not take into consideration the Supplement because it deems that i) although the title does not suggest this, part of the Supplement constitutes a reply to the Notice and pursuant to Rule 126*bis* of the Rules, it should have been submitted within seven days of the Notice having been filed; in addition, ii) on the merits, by dealing with the opening statement of the Accused of 8 November 2007, the Supplement goes beyond the temporal application of the Expert Report;

**CONSIDERING** that in the Notice, the Accused states that he does not accept the statement of Anthony Oberschall, that he wishes to cross-examine him and that he challenges the status of the Witness as an expert, as well as the relevance of the whole Expert Report;

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<sup>7</sup> This document was presented by the Accused without being filed officially, *see* Filing Policy in the Case of the *Prosecutor vs Vojislav Šešelj*, 4 June 2007, p. 3.

<sup>8</sup> "Prosecution's Submission of Supplement to the Expert Report of Dr Anthony Oberschall", 29 November 2007.

<sup>9</sup> Official record of receipt, 2 May 2007.

**CONSIDERING** that except for the fact that the expert witness is a physician and not a lawyer, the Accused does not present any proper grounds for opposing the competence of the Expert Witness;<sup>10</sup>

**CONSIDERING** that the expert status of a witness cited by either Party, after due consideration of the evidence presented, is at the discretion of the Chamber;<sup>11</sup>

**CONSIDERING** that the term "expert" has been defined in case-law as "a person who by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute";<sup>12</sup>

**CONSIDERING** that professional expertise is important in order to establish whether the Witness conforms to this definition;<sup>13</sup>

**CONSIDERING** that the Chamber may, within its discretionary powers, have recourse to *curriculum vitae*, articles, publications or other information relating to the witness for the subject on which expertise is required;<sup>14</sup>

**CONSIDERING** that, in order to be able to attribute the status of expert to Anthony Oberschall, the Chamber must first identify his field of expertise;

**CONSIDERING** that in its Submission, the Prosecution did not explain the field of expertise of the witness that it intends to present as an expert;

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<sup>10</sup> Notice, p. 21755 (numbering given by the Registrar in the English translation).

<sup>11</sup> *Sylvestre Gacumbitsi vs the Prosecutor*, case no. ICTR-2001-64-A, Appeal Judgement, 7 July 2006, para. 31, referring to *Laurent Semanza vs the Prosecutor*, case no. ICTR-97-20-A, Appeal Judgement, para. 304 and *Georges Rutaganda vs the Prosecutor*, case no. ICTR-96-3-A, Appeal Judgement, para. 166. See also, *The Prosecutor vs Martić*, "Decision on Defence's Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94bis", case no. IT-95-11-T, 9 November 2006, para 7.

<sup>12</sup> *The Prosecutor vs Pavel Strugar*, "Decision on the Defence Motions to Oppose Admission of Prosecution Expert Reports Pursuant to Rule 94bis", case no. IT-01-42-PT, 1 April 2004, p. 4.

<sup>13</sup> *The Prosecutor vs Dragomir Milošević*, "Decision on Admission of Expert Report of Robert Donia", case no. IT-98-92/T, 15 February 2007, para. 7 ("*Milošević* Decision").

**CONSIDERING**, therefore, that the Chamber refers to the title of the Expert Report entitled "Vojislav Šešelj's Nationalist Propaganda: Contents, Techniques, Aims and Impacts, 1990-1994"<sup>15</sup> and the table of contents page containing an explanation of the methodology used and a note on the terminology, as well as seven parts entitled: "Explaining Collective Violence", "Techniques and Effects of Mass Media Propaganda", "Nationalist Propaganda in the Serb Mass media", "Šešelj, Messenger of Serb Nationalism: A Content Analysis", "The Serb Mass Media", "Conclusion" and "Citations".<sup>16</sup>

**CONSIDERING** therefore that considering with the matters dealt with in the said report, the Chamber holds that Anthony Oberschall's field of expertise should correspond to the following issues: propaganda in the mass media in general and in Serbia in particular, as well as the nationalist propaganda of the Accused;

**CONSIDERING** that among the many articles written by Anthony Oberschall, some appear to deal with the former Yugoslavia<sup>17</sup> and with violence in the Balkans,<sup>18</sup> but these articles are of a general nature and do not appear to deal specifically with the aforementioned field of expertise;

**CONSIDERING** that the *curriculum vitae* of Anthony Oberschall as presented by the Prosecution does not allow the Chamber to establish a link between the field of expertise as identified above and his considerable qualifications or his significant professional experience as a sociologist;

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<sup>14</sup> *Milošević* Decision, para. 7.

<sup>15</sup> "Vojislav Šešelj's Nationalist Propaganda: Contents, Techniques, Aims and Impacts, 1990-1994."

<sup>16</sup> "Explaining Collective Violence", "Techniques and Effect of Mass Media Propaganda", "Nationalist Propaganda in the Serb Mass Media", "Šešelj, Messenger of Serb Nationalism: A Content Analysis", "The Serb Mass Media", "Conclusion" and "Citations".

<sup>17</sup> "The Breakup of Yugoslavia", "The End of Yugoslavia", "Bosnia: What Now?", "Debalkanizing the Balkans: Prospects for Peace and Democracy in Southeast Europe". For a complete list of articles, see the *curriculum vitae* of Anthony Oberschall, pp. 3 and 4.

<sup>18</sup> "Theories and Realities of Ethnic Violence: Bosnia", "Collective Violence in Bosnia", "From Ethnic Cooperation to Violence and War in Yugoslavia", "The Manipulation of Ethnicity: From Cooperation to Violence and War in Yugoslavia". For a complete list of articles, see the *curriculum vitae* of Anthony Oberschall, pp. 3 and 4.

**CONSIDERING**, moreover, that the Submission gives the impression that Anthony Oberschall wrote his Expert Report on the basis of around 87 books and articles which he did not write himself, allowing for the possibility that he himself did not have the proper expertise in the subject when writing the Expert Report and that his only expertise, therefore, in the identified domain, results from his work while writing the report;

**CONSIDERING**, in addition, that Anthony Oberschall does not appear to have any practical experience of the former Yugoslavia, or to be familiar with the political, social and cultural context of this area; on the contrary, the presence of a translator shows that Anthony Oberschall worked from an English translation of the writings he analysed, in an area where each word that is used and its contextual interpretation are fundamental;

**CONSIDERING**, therefore, that the Chamber holds that Anthony Oberschall is not fit to testify as an expert pursuant to Rule 94*bis* of the Rules, on the issues raised in his report;

**CONSIDERING**, nevertheless, that the Chamber considers that there is no cause to reject the evidence bearing in mind its relevance to the Indictment against the Accused and has decided to hear Anthony Oberschall as a Prosecution witness;

**CONSIDERING**, none the less, that the Prosecution should clearly identify in advance the scope of the examination-in-chief;

**CONSIDERING** that if the Prosecution wishes the Expert Report and its two *addenda* to be tendered into evidence, in their entirety or in part, the same criteria will apply as apply for all evidence;<sup>19</sup>

## **FOR THE FOREGOING REASONS**

**PURSUANT TO** Rules 89, 90 and 94*bis* of the Rules,

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<sup>19</sup> See "Order Setting out the Guidelines for the Presentation of Evidence and the Conduct of the Parties during the Trial", 15 November 2007.

**ORDERS** that:

- i) Anthony Oberschall appear before the Chamber as a witness for the Prosecution to be examined by the Parties and the Chamber;
- ii) the Prosecution identify the scope of the examination-in-chief of Anthony Oberschall by producing for the Chamber and the Accused, before 7 December 2007, a list of specific subjects on which Anthony Oberschall will testify, indicating the page numbers in the Expert Report as well as the numbers of the extracts examined by Anthony Oberschall to which he will refer during the examination-in-chief;
- iii) Anthony Oberschall's testimony is scheduled to start on 11 December 2007 and the examination-in-chief shall not exceed three hours and 45 minutes; and
- iv) if the Accused decides to cross-examine Anthony Oberschall, the cross-examination shall not exceed three hours and 45 minutes.

**RESOLVES** to defer its ruling on tendering the Expert Report into evidence.

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

/signed/

Jean-Claude Antonetti

Pre-Trial Judge

Done this thirtieth day of November 2007

At The Hague

The Netherlands

**[Seal of the Tribunal]**