

**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: 15 January 2008

English
Original: FRENCH

IN TRIAL CHAMBER III

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

Registrar : Mr Hans Holthuis

Decision of: 15 January 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION ON THE QUALIFICATIONS OF EXPERT YVES TOMIĆ

The Office of the Prosecutor

Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

1. 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”), is seized of the “Submission of the Expert Report of Yves Tomić” (“Witness”) filed by the Office of the Prosecutor (“Prosecution”) on 23 May 2006 (“Submission”).¹

I. PROCEDURAL BACKGROUND

2. The Submission includes the expert report of Yves Tomić in “Annex A” (“Expert Report”) and his *curriculum vitae* in “Annex B” (“Curriculum vitae”). Vojislav Šešelj (“Accused”) received the Submission in a language which he understands on 31 May 2006 (“first Record”).²

3. On 12 July 2006, Trial Chamber I ordered that the Accused be given an extension of the time to respond to the Submission, in accordance with Rule 94 *bis* (B) of the Rules of Procedure and Evidence (“Rules”), until 1 September 2006.³ On 25 August 2006, the Accused submitted his response (“Notice”),⁴ and on 22 November 2006, Trial Chamber I sent back the Notice because it was too long.⁵

4. On 26 July 2007, the Notice was filed further to the Decision on the Third Motion of the Accused for Admission of Documents 210, 211 and 212, issued by the Pre-Trial Judge responsible for the case at that time.⁶

5. On 7 November 2007, the Prosecution filed the notice of the original version of the expert Witness’ report in French (“Notice of the Expert Report in French”).⁷ On 9 November 2007, the Accused received the Notice in a language which he understands of the Expert Report in French, and a copy of the Expert Report identical to the one sent to him on 31 May 2006 (“second Record”).⁸

¹ Original in English, submitted on 1 February 2006 and filed on 23 May 2006.

² Record of receipt of documents signed by the Accused on 31 May 2006.

³ Original title in English: “Decision Regarding Deadlines for Responses to Motions on Expert Witnesses and Adjudicated Facts”, 12 July 2006.

⁴ Translation into English of BCS original entitled “Official Notice from Prof Dr Vojislav Šešelj Concerning the Report by the Expert Witness Yves Tomić”.

⁵ Status conference of 22 November 2007, CRF. 802.

⁶ Decision on the third motion of the Accused for admission of documents 210, 211 and 212 (Number 268), 26 July 2007, p. 2.

⁷ Original in English entitled “Prosecution’s Notice of Filing of the Original Expert Report of Yves Tomić in French”, 7 November 2007.

⁸ Record of receipt of documents, signed by the Accused on 9 November 2007.

6. On 20 November 2007, the Accused submitted document 341, in which he responded, *inter alia*, to the Notice of the Expert Report in French (“Document 341”).⁹

II. ARGUMENTS OF THE PARTIES

7. In his Notice, the Accused states that he

- i) challenges the Expert Report;
- ii) wishes to cross-examine the Witness; and
- iii) challenges the entire Expert Report and the qualifications of the Witness as an expert.¹⁰

8. In his Notice, the Accused also again calls into question the Witness’ knowledge of the history of the Serbian people, the content of the Expert Report and the methodology used.¹¹

9. In Document 341, the Accused reiterates that he is challenging the Expert Report, that he will cross-examine the Witness and will challenge the relevance of the entire Expert Report and the qualifications of the Witness as an expert. The Accused states that he will introduce additional evidence in support of his challenges.¹²

III. APPLICABLE LAW

10. Rule 94 *bis* (A) and (B) of the Rules reads as follows:

- 1. A) The full statement and/or report of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge.
- B) Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:
 - i) it accepts the expert witness statement and/or report;
 - ii) it wishes to cross-examine the expert witness; and
 - iii) it challenges the qualifications of the witness as an expert and the relevance of all or parts of the statement and/or report, and if so, which parts.

⁹ Document 341, submitted on 20 November 2007 and filed on 27 November 2007, para. 3.

¹⁰ Notice, p. 2.

¹¹ *Id.*, pp. 2-3.

¹² Document 341, para. 3.

11. The term *expert* has been described in the 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.*¹³

12. Attributing the characterisation of expert to a witness called by one of the parties, in view of the evidence it has presented., falls within the discretionary power of the Chamber.¹⁴ The Chamber may inter alia use the *curriculum vitae*, articles, publications, professional experiences or other information about the witness for which the characterisation of expert is required.¹⁵

IV. DISCUSSION

13. Since the BCS translation of the Expert Report in French which was sent to the Accused on 9 November 2007 was identical to the version sent to the Accused on 31 May 2006, the Chamber will not examine Document 341 on this issue or the additional response to the Expert Report which the Accused states that he wishes to file. In addition, by accepting the Notice, the Chamber has already allowed the Accused to submit a 64-page response to the Expert Report.

14. The Witness' field of expertise, not specifically indicated by the Prosecution in the Submission, derives from the title of the Expert Report: Greater Serbian Ideology in the 19th and 20th Centuries.

15. The Witness holds a degree in research and advanced studies in civilisations earned in the Serbo-Croatian language and a degree in advanced Slavic and Eastern European studies. He is currently working on a doctoral thesis on the Serbian national question in Communist Yugoslavia and is the author of many articles, works, essays and reports on the Serbian national question.. He works in France as an advisor in education and is responsible for the Balkans section at the Library for Contemporary International Documentation at the University of Paris X-Nanterre and is an associate fellow at the Laboratory for the Analysis of Political Systems at the National Centre for

¹³ Decision on the qualifications of expert Anthony Oberschall, 30 November 2007 ("*Obershall*"), p. 2. This decision refers to *The Prosecutor v. Pavle Strugar*, Decision on the Defence Motions to oppose admission of expert Prosecution reports pursuant to Rule 94 bis, Case no. IT-01-42-PT, 1 April 2004, p.4.

¹⁴ *Oberschall* Decision, p. 2 referring to *Sylvestre Gacumbitsi v. The Prosecutor*, Case no. ICTR-2001-64-A, Judgement, 7 July 2006, para. 31

¹⁵ *Ibid.* This decision refers to *The Prosecutor v. Dragomir Milošević*, original in English entitled "Decision on admission of Expert Report of Robert Donia", Case no. IT-98-29/T, 15 February 2007, para. 7.

Scientific Research. The Witness is also a consultant on the Balkans at the French Ministry of Defence and president of the French Association for Balkan Studies.¹⁶

16. Given the Witness' training, professional experience, his many publications and his membership of professional associations, it appears that he is well versed in the cultural, social, political and historical background of the former Yugoslavia. Accordingly, the Chamber considers that he is qualified to testify as an expert within the meaning of Rule 94 *bis* of the Rules on the matters raised in his report.

17. This notwithstanding, the Chamber considers that in view of the objections raised by the Accused, that the Witness must appear before the Tribunal to respond to the questions put to him by the Prosecution, the Accused, and the Chamber should it so desire. During the cross-examination, the Accused will have the opportunity to challenge the probative value, relevance and reliability of the conclusions set out in the Expert Report.

18. In light of the Witness' testimony in this case, the Chamber will assess the relevance and probative value of the Expert Report and will rule on whether that Report will be admitted into evidence.

V. DISPOSITION

19. For these reasons, pursuant to Rule 94 *bis* of the Rules, the Chamber, **ORDERS** that,

- i) Yves Tomić shall appear before the Chamber as an expert for questioning by the Parties and the Chamber;
- ii) the length of the examination-in-chief shall be limited to 4 hours; and
- iii) should the Accused wish to cross-examine Yves Tomić, the cross-examination shall be limited to 4 hours.

¹⁶ See Submission, Annex B.

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

Jean-Claude Antonetti

Presiding Judge

Done this fifteenth day of January 2008

At The Hague

The Netherlands

[Seal of the Tribunal]