



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: 14 April 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 14 April 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON THE ADMISSION OF EVIDENCE PRESENTED DURING
THE TESTIMONY OF ANDRÁS RIEDLMAYER**

The Office of the Prosecutor

Mr Mathias Marcussen

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

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 an oral request to admit into evidence the report of expert András Riedlmayer (“Report”) together with all the attached exhibits and annexes, presented by the Office of the Prosecutor (“Prosecution”) on 27 and 28 May 2008.¹

II. PROCEDURAL BACKGROUND

2. By way of the Decision of 8 May 2008,² the Chamber attributed the status of expert to Mr Riedlmayer (“Expert”).

3. In its Decision of 8 May 2008, the Chamber specified that it was only in light of the testimony of the Expert in this case, that the Chamber would be able to rule on the admission into evidence of the Report.³

4. The Chamber heard the Expert on 21, 22, 27 and 28 May 2008 on the issue of the destruction of cultural and religious property in certain municipalities in Bosnia and Herzegovina during the conflict in the former Yugoslavia.⁴

5. During the hearings of 27 and 28 May 2008, the Prosecution requested that the following documents be admitted into evidence:⁵

- 1) 65 *ter* document number 463, namely the Expert Report together with all the attached exhibits and annexes (“Documents Annexed to the Report”), including notably a database (“Database”) and a map showing the destruction of mosques in Bosnia and Herzegovina during the war;
- 2) 65 *ter* document number 463A, namely a slide show of photographs (“Slide Show”);

¹ András Riedlmayer, T (F), pp. 7417-7418, 7478-7479.

² “Decision on Expert Status of András Riedlmayer, 8 May 2008 (“Decision of 8 May 2008”).

³ Decision of 8 May 2008, p. 3.

⁴ Hearings of 21, 22, 27 and 28 May 2008, T (F), pp. 7262-7369, 7391-7514.

⁵ András Riedlmayer, T (F), pp. 7417-7418 and 7478-7479.

- 3) part of a 65 *ter* document number 2188A, namely two photographs of the Ahatović mosque.

III. APPLICABLE LAW

6. The Chamber has examined the documents sought for admission in light of Rules 89 and 95 of the Rules of Procedure and Evidence (“Rules”) and the procedures established in the Order of 15 November 2007 which set out the guidelines for the presentation of evidence and the conduct of the parties during the trial.

7. The Chamber recalls, furthermore, that at this stage of the proceedings it will only consider *prima facie* the relevance, reliability and probative value of the evidence submitted and need not make a final assessment. It will only do so at the end of the proceedings when all the Prosecution and Defence evidence will have been admitted into evidence.⁶

8. The Chamber recalls, moreover, that an expert witness may not comment on the ultimate questions that the Trial Chamber will decide upon and is thus not authorised to express his opinion on subjects such as the criminal liability of an accused.⁷

IV. DISCUSSION

A. The request for the admission into evidence of 65 *ter* document number 463.

1. The Report

9. Throughout the Expert’s testimony, the Accused raised objections in order to oppose the admission of the Report.

⁶ *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, “Decision to Admit Documentary Evidence Presented by the Prosecution (Ljubuški Municipality including the HVO Prison and Vitina-Otok Camp)”, confidential, 5 October 2007, p. 7.

⁷ *The Prosecutor v. Milan Martić*, Case No. IT-95-11-T, “Decision on Defence’s Submission of the Expert Report of Milisav Sekulić Pursuant to Rule 94 *bis*, and on Prosecution’s Motion to Exclude Certain Sections of the Military Expert Report of Milisav Sekulić, and on Prosecution Motion to Reconsider Order of 7 November 2006”, p. 5; *The Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-T, “Decision on Report of Prosecution Expert Klaus Reinhardt”, 11 February 2004, p. 4; *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Hearing of 28 January 2000, T, pp. 13305-13307.

10. The Accused endeavoured to show both the incompetence of the Expert on the subject of the destruction of cultural and religious property during the conflict in the former Yugoslavia,⁸ as well as his partiality.⁹

11. With regard to the Expert's competency, the Chamber already ruled on this issue in the Decision of 8 May 2008 and considered "that in light of the Witness's training, professional experience, numerous publications and membership in professional associations, he is familiar with the issue of cultural destruction during the conflict in the former Yugoslavia and that he is, therefore, entitled to testify as an expert within the meaning of Rule 94 *bis* of the Rules, about the subject matter addressed in his report".¹⁰ Furthermore, there is nothing in the Expert's testimony that would justify that the Chamber reconsider its decision.

12. With regard to the impartiality of the Expert, the Chamber recalls that an expert is obliged to testify with the utmost neutrality and with scientific objectivity.¹¹ However, objections relating to the impartiality of a witness classified as an expert do not concern whether or not the evidence is admissible but have a bearing on the assessment of the evidence presented by the expert.¹² On only rare occasions has the Trial Chamber denied the admission of this type of evidence for reasons of partiality or the appearance of bias. This rejection was, however, motivated by the fact that the evidence was so lacking in terms of indicia of reliability that it was not probative.¹³ An example of a situation where the threshold of a minimal indicia of reliability was not observed was in the *Akayesu* case before the ICTR where the witness the defence intended to call as an expert was another accused before the Tribunal.¹⁴

13. The Chamber notes in this case, the Expert's assignment was to record the destruction of cultural and religious property. Yet, far from contesting the subject of

⁸ András Riedlmayer, T (F), pp. 7421-7422.

⁹ András Riedlmayer, T (F), pp. 7445-7446, 7458-7459, 7486, 7489-7490.

¹⁰ "Decision on Expert Status of András Riedlmayer", 8 May 2008, p. 2.

¹¹ In this regard, *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.2, "Decision on Joint Defence Interlocutory Appeal Concerning the Status of Witness Richard Butler as an Expert Witness", 30 January 2008, para. 20 ("Popović Appeal Decision") citing *The Prosecutor v. Ferdinand Nahimana et al.*, Case No. ICTR-99-52-A, Judgement, 28 November 2007, para. 199.

¹² See *Branin* Decision, p. 5.

¹³ *Popović* Appeal Decision, para. 22.

¹⁴ The witness was Ferdinand Nahimana, see *The Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, "Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness", 9 March 1998, p. 2.

the Report, the Accused, himself, acknowledged, “the fact that mosques and churches were destroyed in this war, it’s [sic] a notorious fact.”¹⁵ Consequently, the alleged partiality of the Expert does not undermine the scientific objectivity and thus the reliability of his Report and the other documents that he prepared for the assignment with which he was entrusted in this case.

14. With regard to the other objections raised by the Accused,¹⁶ the Chamber considers that they do not concern the admissibility of the Report, but the assessment and weight accorded to its contents which the Chamber will determine at the end of the proceedings when it will take into consideration all the evidence produced.

15. The Chamber considers, finally, that the Report is relevant and presents sufficient indicia of reliability to be admitted under Rule 89 of the Rules. Nevertheless, the Chamber notes that on several occasions, the Expert went beyond his specific area of competence, to comment on issues of responsibility, attributing the destruction of monuments, even the deaths of non-Serbian civilians, to Serb nationalists or even to Serb forces.¹⁷ The Chamber insists on the fact that an expert may not comment on issues of responsibility. Consequently, the Chamber will not take into consideration the parts of the Report which go beyond the Expert’s specific area of competence, notably those parts where he expresses his opinion on the responsibility of the perpetrators of the destruction of cultural and religious property with which he became familiar while compiling his Report.

2. The Documents Annexed to the Report

16. The Documents Annexed to the Report are listed in Annex II of the Report.¹⁸

¹⁵ Andrés Riedlmayer, T (F), 7487. The Accused also declared during the hearing that there was “no doubt as to the fact that a large number of mosques were destroyed during the war” and that he had moreover “not tried to demonstrate the opposite”. (T (F), p. 7479) / Translation of French transcript/.

¹⁶ The Chamber notes, for example, that the Accused alleged that photographs in the Database attached to the Report had been manipulated. (Andrés Riedlmayer, T (F), p. 7439).

¹⁷ See, for example, Report, paras 25, 28, 21, 37, 38, 49, 52, 53.

¹⁸ Report, pp. 28-29, “Appendix 2”, listing the following documents: A.2.1: the Database; A.2.2: an article by the Expert entitled: “From the Ashes: The Past and Future of Bosnia’s Cultural Heritage”; A.2.3: an article by the Expert entitled: “Convivencia under Fire: Genocide and Book Burning in Bosnia”; A.2.4: a map of Bosnia and Herzegovina indicating the sites of mosques destroyed or damaged during the war; A.2.5: a video extract showing the destruction of mosques in Bijeljina; A.2.6: an article by Jolyon Naegele entitled: “Bosnia: Banja Luka’s Mufti Tell of ‘Four Years of Horror’”; A.2.7: Decision rendered by the Court of Human Rights of Bosnia and Herzegovina concerning the

(a) The Database (Annex A.2.1)

17. The Expert Database consists of a document with 158 entries, each one corresponding to a site the Expert visited. For each site, the Expert presents a photo of the monument before the conflict and another one taken after its destruction, together with his findings referring to the level of destruction according to a classification system designed by the Expert and presented in his Report.

18. During the Expert's presentation in the form of a slide show of some of the entries in the document, and during the direct examination conducted by the Prosecution, the Accused raised a number of objections concerning the sites studied in the Database, arguing that some of the photographs allegedly depicting the same site before and after its destruction did not correspond.¹⁹ On each occasion, the Expert replied to the Accused by trying to show that each of the disputed photographs corresponded.²⁰

19. The Chamber considers, therefore, that the Database is crucial for understanding the Report and the Experts' testimony and admits the Database into evidence.

20. The Chamber finds, nevertheless, that, as the Expert did in his Report, he also comments in his Database, on several occasions, on issues of responsibility which go beyond his area of competence.²¹ Consequently, the Chamber will only take into consideration the Expert's findings that are strictly within the scope of his assignment and form the subject of his study, without including the parts of the Database concerning the alleged perpetrators of the destruction.

b) An article written by the Expert entitled "From the Ashes: The Past and Future of Bosnia's Cultural Heritage" (Annex A.2.2)

destruction of mosques in June 1999, November 2000 and December 2000; A.2.7: (sic): three reports from the Council of Europe on the destruction of cultural heritage in Croatia and Bosnia, of February, July and September 1993 (The Expert Report contains two Annexes A.2.7, the second shall be referred to as "Annex A.2.7 bis"); A.2.8: Annex 8 to the Dayton Agreement; A.2.9: the *curriculum vitae* of the Expert.

¹⁹ András Riedlmayer, T (F), pp. 7308-7309, 7394.

²⁰ András Riedlmayer, T (F), pp. 7309, 7392-7395.

²¹ See, for example, Database, pp. 04692560, 04692593, 04692604, 04692617, 04692682, 04692743, 04692898, 04692910, 04692919, 04692940, 04693015, 04693027.

21. Annex A.2.2 of the Report consists of an article published by the Expert in 2002 that deals with the destruction of various cultural and religious monuments in Bosnia and Herzegovina. This article focuses notably on the fire at the Sarajevo National Library on 25 August 1992 and the destruction of one and a half million books that were kept there.²² This figure was challenged in court by the Accused, who cited the 1993 report by the Parliamentary Assembly of the Council of Europe that mentioned the destruction of 600,000 books.²³ According to the most recent studies and a more comprehensive evaluation of the destruction that occurred following the conflict, the Expert states, nevertheless, that the figure of 1,500,000 is a more or less reliable estimate of the number of books that were destroyed following the shelling and the fire at the Sarajevo National Library.²⁴

22. The Chamber deems that this article is not crucial for an understanding of the Report and the Expert's testimony, and consequently rejects the request for admission of this document into evidence.

c) An article written by the Expert entitled "Convivencia under Fire: Genocide and Book Burning in Bosnia" (Annex A.2.3)

23. Annex A.2.3 of the Report is an article of approximately 20 pages published in 2001, in which the Expert cites the destruction of cultural and religious property in Bosnia and Herzegovina during the time period covered by the Indictment.²⁵

24. The Chamber deems that this article is not crucial for an understanding of the Report and the Expert's testimony, and consequently rejects the request for admission of this document into evidence.

d) A map of Bosnia and Herzegovina indicating the sites of mosques that were destroyed or damaged during the war (Annex A.2.4)

25. The Expert indicated in court that the map attached as Annex A.2.4 of his Report indicates the sites of mosques that were damaged, destroyed or remained intact

²² Annex A.2.2 of the Report, pp. 02192149-02192150.

²³ András Riedlmayer, T(F), p. 7466; *see also* Annex A.2.7 of the Report.

²⁴ András Riedlmayer, T(F), pp. 7467-7468.

²⁵ Annex A.2.3 of the Report, pp. 02296744-02296750.

during the war, and which he subsequently visited. He also testified that he used this map when writing his Report.²⁶

26. The Chamber deems that this article is not crucial for an understanding of the Report and the Expert's testimony, and consequently rejects the request for admission of this document into evidence.

e) Excerpt from a video showing the destruction of mosques in Bijeljina (Annex A.2.5)

27. As the majority of this video has already been admitted,²⁷ the Prosecution stated in court that it would not seek to tender this exhibit into evidence.²⁸

28. The Chamber therefore considers itself disqualified to deal with the request to admit this document into evidence.

f) An article written by Jolyon Naegele entitled: "Bosnia: Banja Luka's Mufti Tell of Four Years of Horror" (Annex A.2.6)

29. This magazine article deals with the events that occurred in Banja Luka municipality.

30. The Chamber deems that this article is not crucial for an understanding of the Report and the Expert's testimony, and consequently rejects the request for admission of this document into evidence.

g) Three decisions rendered by the Human Rights Chamber for Bosnia and Herzegovina concerning the destruction of mosques in June 1999, November 2000 and December 2000 (Annex A.2.7).

31. Annex A.2.7 of the Report consists of a series of three decisions of the Human Rights Chamber for Bosnia and Herzegovina concerning the Islamic Community of Bosnia and Herzegovina versus Republika Srpska and relating to the destruction of mosques during the war.

²⁶ András Riedlmayer, T (F), p. 7414.

²⁷ Exhibit P348.

²⁸ András Riedlmayer, T(F), p. 7417.

32. The first decision, dated 11 June 1999 (Case number CH/96/29) relates to the destruction of mosques in the Banja Luka municipality in 1993 and the refusal by the Republika Srpska authorities to reconstruct them.

33. The second decision, dated 9 November 2000 (Case number CH/98/1062),²⁹ relates to the 1992 destruction of certain religious buildings in Zvornik municipality.

34. The last decision, dated 6 December 2000 (Case number CH/99/2656),³⁰ relates to the situation of the mosques in Bijeljina and in Janja.

35. The Chamber deems that these three decisions are not crucial for an understanding of the Report and the Expert's testimony, and consequently rejects the request for admission of these documents into evidence.

h) Three reports from the Council of Europe on the destruction of cultural heritage in Croatia and Bosnia in February, July and September 1993 (Annex A.2.7 bis)

36. Annex A.2.7 *bis* groups together three reports from the Committee on Culture and Education of the Parliamentary Assembly of the Council of Europe dated 25 February 1993 (document number 6756), 17 July 1993 (final document number 6869) and 20 September 1993 (document number 6904). These reports present an updated study based on reports chronicling war damage to cultural heritage in Croatia and Bosnia and Herzegovina.³¹

37. The Chamber deems that these reports are not crucial for an understanding of the Report and the Expert's testimony, and consequently rejects the request for admission of these documents into evidence.

(i) Annex 8 of the Dayton Peace Agreement (Annex A.2.8)

38. Annex A.2.8 of the Expert Report consists of the Dayton Peace Agreement in which, on 14 December 1995, the Republic of Bosnia and Herzegovina, the

²⁹ Annex A.2.7 of the Report, pp. 03265275-03265298.

³⁰ Annex A.2.7 of the Report, pp. 03265299-03265323.

³¹ More recent studies by the Expert, nevertheless, led him to revise some of the figures in the third report concerning the scale of the destruction in the Sarajevo National Library (T (F), pp. 7466-7468).

Federation of Bosnia and Herzegovina, and Republika Srpska agreed on the creation of an independent commission for the preservation of national monuments.

39. The Chamber deems that this document is not crucial for an understanding of the Report and the Expert's testimony, and consequently rejects the request for admission of this document into evidence.

j) The Expert's *curriculum vitae* (Annex A.2.9)

40. The Expert's *curriculum vitae* appears in Annex A.2.9 of his Report. The Chamber points out that it already examined this document when deciding on the witness appearing as an expert. Nevertheless, considering the fact that this document has not previously been admitted and that the Accused has raised allegations that the Expert is biased and incompetent, the Chamber decides to admit this document as it will be crucial when examining what weight to accord to the evidence presented by the Expert.

B. Admission into evidence of a part of 65 *ter* document number 2188A

41. In addition to the Report and the Documents Annexed to the Report, the Prosecution also requests the admission of two photographs of the Ahatovići mosque used in the slide show shown by the Expert in court. These two photographs were selected from a series of five photographs that make up 65 *ter* document 2188A³² and were disclosed to the Accused on 20 May 2008.³³ Furthermore, the Expert commented on these photos in court³⁴ and the Accused did not object to them being admitted.³⁵

42. The Chamber deems that these photographs are crucial for an understanding of the Expert's testimony, and consequently admits them into evidence.

C. Admission into evidence of 65 *ter* document number 463 A

³² The photographs that the Prosecution seeks to have admitted correspond to documents number 06347936 and 06347937 within 65 *ter* document 2188A.

³³ András Riedlmayer, T (F), p. 7479.

43. The Slide Show that the Prosecution seeks to tender into evidence is crucial for an understanding of the Expert's testimony before the Chamber. According to the Expert, he had prepared it during the proofing session prior to his testimony using exhibits drawn from the Database.³⁶ Even if the Slide Show was for the most part drawn up from exhibits contained in the Database, the Chamber notes nonetheless that aside from the two photographs of the Ahatovići mosque examined previously, some of the exhibits that make up the Slide Show do not appear in either the Database or in the Prosecution's 65 *ter* List ("Missing Exhibits").

44. The Missing Exhibits are as follows:

- The Maps;³⁷
- The text attached to the photograph of the Ljubovići mosque (Nevesinje);³⁸
- The left photograph of the Redžići mosque (Zvornik);³⁹
- The right photograph of the Divić mosque (Zvornik);⁴⁰

45. It appears therefore that the Slide Show is not simply a selection of the exhibits contained in the Database, but also includes certain exhibits for which it is not certain whether they were disclosed to the Accused prior to the Expert's testimony. Consequently, the Chamber accepts the Slide Show into evidence, but will not consider the Missing Exhibits.

³⁴ András Riedlmayer, T (F), pp. 7303-7304.

³⁵ András Riedlmayer, T (F), pp. 7479-7480.

³⁶ András Riedlmayer, T(F), pp. 7274-7278.

³⁷ Slide Show, p. 06347951.

³⁸ Slide Show, p. 06347954.

³⁹ Slide Show, p. 06347955.

⁴⁰ Slide Show, p. 06347961. The photograph contained in the Database appears nonetheless to show the same building from a different angle.

V. DISPOSITION

46. For the foregoing reasons, pursuant to Rule 89 (C) of the Rules, **PARTIALLY GRANTS** the request and **DECIDES** to admit the following documents, bearing in mind the above reservations:

- The Expert Report;
- The Database (Annex A.2.1 of the Report);
- The CV of the Expert (Annex A.2.9 of the Report);
- The two photographs of the Ahatovići mosque contained in the Slide Show;
and
- The Slide Show,

Consequently **ORDERS** the Registry to assign exhibit numbers to each of these documents,

REJECTS all the other Prosecution requests.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this fourteenth day of April 2010
At The Hague
The Netherlands

Seal of the Tribunal