

**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-04-74-T
Date: 17 August 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 17 August 2007

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ČORIĆ
Berislav PUŠIĆ**

PUBLIC

**DECISION REGARDING THE SUBMISSION OF THREE EXPERT REPORTS OF
EWA TABEAU UNDER RULE 94 *BIS* (A) AND (B)**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Čorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

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 “Prosecution Submission of the Expert Reports of Ewa Tabeau” filed by the Office of the Prosecutor (“Prosecution”) on 26 June 2007 (“Submission”),

NOTING the three expert reports of Ewa Tabeau annexed to the Prosecution Submission (“Expert Reports”),

NOTING “Praljak’s Notice regarding Prosecution’s Submission of the Expert Reports of Ewa Tabeau”, filed by the Defence for Slobodan Praljak (“Praljak Defence”) on 3 July 2007 (“Praljak Notice”), “Ćorić’s Notice regarding Prosecution’s Submission of the Expert Reports of Ewa Tabeau”, filed by the Defence for Valentin Ćorić (“Ćorić Defence”) on 5 July 2007 (“Ćorić Notice”), and the “Notice of Berislav Pušić pursuant to Rule 94 *bis* (B) (Ewa Tabeau)” filed by the Defence for Berislav Pušić (“Pušić Defence”) on 10 July 2007 (“Pušić Notice”), in which the Praljak, Ćorić and Pušić Defences request leave to cross-examine Expert Witness Ewa Tabeau pursuant to Rule 94 *bis* (B) of the Rules of Procedure and Evidence (“Rules”),

NOTING the “Notice of Bruno Stojić pursuant to Rule 94 *bis* (B) (Ewa Tabeau)”, filed by the Defence for Bruno Stojić (“Stojić Defence”) on 10 July 2007 (“Stojić Notice”) in which the Stojić Defence points out that it does not accept the Expert Reports of Ewa Tabeau and that it wishes to cross-examine Expert Witness Ewa Tabeau,

NOTING the “Milivoj Petković Notice under Rule 94 *bis* (B) Responding to Prosecution 26 June 2007 Filing of the Reports of Proposed Expert Witness Ewa Tabeau”, filed by the Defence for Milivoj Petković (“Petković Defence”) on 10 July 2007 (“Petković Notice”) in which the Petković Defence points out that it does not accept the Expert Reports of Ewa Tabeau and that it wishes to cross-examine Expert Witness Ewa Tabeau,

NOTING “Jadranko Prlić’s Response to Prosecution’s Submission of the Expert Reports of Ewa Tabeau” filed by the Defence for Jadranko Prlić (“Prlić Defence”) on

12 July 2007 (“Prlić Notice”) in which the Prlić Defence opposes the admission of the Expert Reports of Ewa Tabeau and in the alternative requests leave to cross-examine Witness Ewa Tabeau should the Chamber decide to admit the Expert Reports,

NOTING the “Prosecution Request for Leave to Reply and Proposed Reply to Defence Notices Regarding Prosecution Submission of the Expert Reports of Ewa Tabeau” filed on 19 July 2007 (“Reply”) in which the Prosecution requests the leave of the Chamber to file a Reply to the Notices filed by the Defence, to overrule the Defence objections against the Expert Reports of Ewa Tabeau, to admit the Expert Reports of Ewa Tabeau into evidence, to confirm that Ewa Tabeau is qualified to be heard as an expert under Rule 94 *bis* of the Rules and to authorise the examination-in-chief and cross-examination of Ewa Tabeau,

CONSIDERING that Rule 94 *bis* (A) of the Rules provides only for the obligation to disclose the full report of any expert called by a party within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge, without compelling a party to provide grounds in support of its disclosure, the Chamber grants the Prosecution leave to file a Reply to the Notices of the Praljak, Ćorić, Pušić, Stojić, Petković and Prlić Defences (“the Defence”),

CONSIDERING that the Chamber notes, however, that this is an exceptional authorisation specific to the circumstances of this Submission of the Prosecution under Rule 94 *bis* (A) of the Rules,

CONSIDERING that in support of their respective Notices, the Praljak, Ćorić and Pušić Defences limit themselves to informing the Chamber that they wish to cross-examine Ewa Tabeau, not indicating whether they accept the Expert Reports and/or challenge the expert qualification of Ewa Tabeau and/or challenge the relevance of the Expert Reports,¹

CONSIDERING that in their respective Notices the Stojić and Petković Defences put forth no specific reason justifying their opposition to the Expert Reports,

¹ Praljak Notice, para. 2; Ćorić Notice, para. 2; Pušić Notice, para. 2.

CONSIDERING that in support of its Notice, the Stojić Defence indicates that it does not challenge the qualifications of Ewa Tabeau or the relevance of the Expert Reports,²

CONSIDERING that in its Notice, the Prlić Defence argues that it opposes the admission of the Expert Reports on the grounds that they cannot be qualified as demographic reports, that they are not relevant and that they do not deal with an event which took place during the period material to the Indictment,³ but without indicating which parts of the Expert Reports it challenges,

CONSIDERING that the Defence wishes to cross-examine Ewa Tabeau⁴ and that the Prosecution does not object,⁵

CONSIDERING that Ewa Tabeau has already testified as an expert witness in other cases before the Tribunal,⁶

CONSIDERING that from a review of the Expert Reports and the professional qualifications of Ewa Tabeau, the Chamber considers that Ewa Tabeau is fully qualified to testify as an expert on the subject matter raised in his reports, in particular on relevant aspects of demography,

CONSIDERING that pursuant to the requests of the Prosecution and Defence, the Chamber considers that Ewa Tabeau will have to testify before the Tribunal viva voce to answer questions from the Prosecution and the Defence in examination and cross-examination,

CONSIDERING that during the cross-examination, the Defence will have the opportunity to challenge the validity and relevance of the conclusions in the Expert Reports,

CONSIDERING that it is in the light of the testimony of the Expert Witness Ewa Tabeau before this Tribunal that the Chamber will assess the relevance and

² Stojić Notice, para. 2.

³ Prlić Notice, para. 1.

⁴ Praljak Notice, para. 2; Ćorić Notice, para. 2; Pušić Notice, para. 2; Stojić Notice para. 2; Petković Notice, para. 2; Prlić Notice, para. 2.

⁵ Reply, para. 3.

probative value of the Expert Reports and rule upon the admission of the Expert Reports,

FOR THE FOREGOING REASONS,

PURSUANT TO Rules 126 *bis* and 94 *bis* of the Rules,

GRANTS the Prosecution leave to file the Reply

DECIDES that Ewa Tabeau will appear before the Chamber as an expert witness to be examined by the parties and the Chamber, **AND**

ORDERS as follows:

- (1) Should the Prosecution wish to examine Ewa Tabeau, the duration of this examination shall not exceed three hours,
- (2) Should the Defence wish to cross-examine Ewa Tabeau, the duration of the cross-examination shall not exceed three hours, on the understanding that each Defence team will have 30 minutes for this, unless the Defence teams agree to divide the time for cross-examination differently.

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this seventeenth day of August 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

⁶ *The Prosecutor v. Slobodan Milošević*, Case No. IT-02-54; *The Prosecutor v. Milomir Stakić*, Case No. IT-97-24; *The Prosecutor v. Stanislav Galić*, Case No. IT-98-29; *The Prosecutor v. Blagoje Simić*, Case No. IT-95-9.