

**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: 29 January 2009

Original: English

**IN TRIAL CHAMBER III**

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

**Acting Registrar:** Mr. John Hocking

**Decision of:** 29 January 2009

**PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

***PUBLIC***

---

**DECISION ON ADMISSION OF DOCUMENTS PRESENTED THROUGH  
EXPERT WITNESSES VIŠNJA BILIĆ AND ANNA-MARIA RADIĆ**

---

**Office of the Prosecutor**

Mr. Daryl Mundis  
Ms. Christine Dahl

**The Accused**

Mr. Vojislav Šešelj

## I. INTRODUCTION

1. **TRIAL CHAMBER III** (“Trial 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 seised of the Prosecution’s request to add 31 documents to its Rule 65*ter* exhibit list (“Exhibit List”) and to admit into evidence documents presented during the testimonies of Višnja Bilić and Anna-Maria Radić on 18 and 19 November 2008 and 20 November 2008, respectively.

## II. PROCEDURAL BACKGROUND

2. On 16 June 2008, the Trial Chamber granted a request by the Prosecution to replace Ivan Gruić with Višnja Bilić and Anna-Maria Radić as designated experts on the Prosecution Rule 65*ter* witness list — regarding the exhumation and identification processes in Croatia and the issue of displaced persons and refugees, respectively — but deferred its determination as to whether either witness qualified as an expert pending reception of their reports.<sup>1</sup>

3. On 13 November 2008, following its reception of Višnja Bilić’s report and *curriculum vitae*,<sup>2</sup> the Trial Chamber qualified her as an expert under Rule 94*bis* of the Rules of Procedure and Evidence of the Tribunal (“Rules”) concerning the exhumation and identification processes in Croatia, and granted the Prosecution leave to add her report, along with its accompanying documents, to the Prosecution Exhibit List.<sup>3</sup> The Trial Chamber stayed its ruling, however, as to the addition to the Exhibit List of 31 missing person questionnaires related to individuals listed in Annex III to the Indictment pending receipt of their English translations.<sup>4</sup>

4. On 18 November 2008, following its reception of Anna-Maria Radić’s report and *curriculum vitae*,<sup>5</sup> the Trial Chamber qualified her as an expert under Rule 94*bis* concerning displaced persons and refugees, and granted the Prosecution leave to add her report, along with its accompanying documents, to the Exhibit List.<sup>6</sup>

<sup>1</sup> Decision on Prosecution’s Motion for Leave to Amend its Witness List and Exhibit List, 16 June 2008, paras 21- 22.

<sup>2</sup> Prosecution Submission of the Report of Ms. Višnja Bilić Pursuant to Rule 94 *bis* and Motion for Leave to amend the Rule 65*ter* Exhibit List, 3 November 2008.

<sup>3</sup> Decision on the Expert Status of Ms. Višnja Bilić and the Prosecution’s Motion for Leave to Amend the Rule 65*ter* Exhibit List, 13 November 2008 (“Višnja Bilić Expert Decision”), para. 16.

<sup>4</sup> *Ibid.*

<sup>5</sup> Prosecution Notice of Disclosure of the Expert Report of Anna-Maria Radić Pursuant to Rule 94 *bis* and Motion for Leave to amend the Rule 65*ter* Exhibit List, 17 November 2008 (dated 14 November 2008).

<sup>6</sup> Original in French entitled « Décision sur le statut d’expert d’Anna-Maria Radić et sur l’ajout de son rapport et des documents y ayant trait sur la liste 65*ter* », 18 November 2008 (“Anna-Maria Radić Expert Decision”), p. 2 ; *see also* Hearing of 18 November 2008, T. 11795.

5. In both its 13 November 2008 and 18 November 2008 decisions, the Trial Chamber indicated that it would rule on the admission into evidence of the expert reports, as well as that of their accompanying documents, in light of Višnja Bilić and Anna-Maria Radić's respective testimony.<sup>7</sup>

6. The Trial Chamber heard Višnja Bilić on 18 and 19 November 2008<sup>8</sup> and Anna-Maria Radić on 20 November 2008.<sup>9</sup>

### III. APPLICABLE LAW

7. A Trial Chamber may grant a motion seeking leave to amend the Prosecution's Rule 65ter exhibit list if it is satisfied that it is in the interests of justice to do so.<sup>10</sup> In view of the rights of an accused to a fair and expeditious trial, and to adequate time and facilities for the preparation of his defence, the Trial Chamber must ensure that an accused will not be prejudiced as a result of the said addition.<sup>11</sup> The Trial Chamber may also take into account additional criteria, including, whether the proposed evidence is *prima facie* relevant and of probative value to the charges against an accused and whether good cause for amending the exhibit list is shown.<sup>12</sup>

8. Further, all proceedings regarding the admission of exhibits must comply with Rule 89 of the Rules and acknowledge the guidelines governing the presentation of evidence and the conduct of the parties during the trial as set out in the Annex of the Order of 15 November 2007 ("Guidelines").

9. The Chamber recalls the fundamental distinction that exists between the legal admissibility of documentary evidence and the weight that will be attributed to it in light of the complete trial record.<sup>13</sup> Indeed, at this stage of the proceedings, the Chamber does not need to make a final assessment of the relevance, reliability and the probative value of the evidence. This assessment

<sup>7</sup> See Višnja Bilić Expert Decision, para. 16 ; Anna-Maria Radić Expert Decision, p. 2.

<sup>8</sup> Hearing of 18 November 2008, T. 11769-11854; Hearing of 19 November, T. 11855-11893.

<sup>9</sup> Hearing of 20 November 2008, T. 11958-12051.

<sup>10</sup> *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motion for Leave to Amend its Rule 65ter Exhibit List, 8 May 2008, confidential, para. 5.

<sup>11</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Leave to Add and Withdraw Witnesses from the 65ter Witness List, confidential, 3 October 2007, para. 10.

<sup>12</sup> *Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution's Motion for Leave to Amend Rule 65ter Witness List and Rule 65ter Exhibit List, confidential, 6 December 2006, p. 7.

<sup>13</sup> Guidelines. Annex, para. 2.

shall be made at the end of the trial in light of all the evidence, both prosecution and defence, which will have been admitted into evidence.<sup>14</sup>

#### IV. DISCUSSION

##### A. Addition to the Exhibit List of the 31 missing person questionnaires

10. The Trial Chamber recalls that, by decision dated 13 November 2008, it stayed its ruling as to the addition to the Exhibit List of 31 missing person questionnaires related to individuals listed as Ovčara victims in Annex III to the Indictment pending receipt of their English translations.<sup>15</sup> During her testimony, Višnja Bilić identified these 31 documents as official missing person questionnaires from the archives of the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity.<sup>16</sup> The Prosecution indicated during the hearing of 18 November 2008 that all but one of these 31 documents had been translated into English and moved for their admission into evidence.<sup>17</sup>

11. The Trial Chamber notes that, while he did not specifically address the addition to the Exhibit List of these 31 missing person questionnaires during the 18 November 2008 hearing, the Accused did consent to their admission into evidence.<sup>18</sup>

12. The Trial Chamber notes that the one untranslated document identified by the Prosecution, bearing Rule 65ter number 7389, was marked as MFI P630 during the hearing pending receipt of its English translation<sup>19</sup> — which the Trial Chamber is still awaiting. The Trial Chamber further notes that it does not have an English translation of document bearing Rule 65ter number 7402. Moreover, the Trial Chamber notes that there is a discrepancy between the information contained in the missing person questionnaire bearing Rule 65ter number 7390 and the information in Annex III to the Indictment, in that the first name and year of birth of the individual concerned by that questionnaire (Mufat Omerović, born 29 November 1963) differs from what is listed in Annex III to the Indictment (Mersad Omerović, born in 1970).<sup>20</sup>

13. The Trial Chamber notes that, aside from the three documents explicitly cited above — Rule 65ter numbers 7389 (MFI P630), 7402 and 7390 — the remaining 28 missing person

<sup>14</sup> *The Prosecutor v. Jadranko Prlić et al.*, case no. IT-04-74-T, Decision to Admit Documentary Evidence Presented by the Prosecution, confidential, 5 October 2007, p. 7.

<sup>15</sup> See para. 3 *supra*.

<sup>16</sup> Hearing of 18 November 2008, T. 11811.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Hearing of 18 November 2008, T. 11813.

<sup>20</sup> Compare Rule 65ter number 7390 (missing person questionnaire file for Mufat Omerović born 29 November 1963) with Annex III p. 13 (indicating that a Mersad Omerović born in 1970 was one of the victims at Ovčara).

questionnaires (“28 Missing Person Questionnaires”) have been provided in English and match the names of victims listed by the Prosecution in Annex III to the Indictment. The Trial Chamber therefore grants the Prosecution leave to add the 28 Missing Person Questionnaires to the Exhibit List.<sup>21</sup>

14. The Trial Chamber continues to stay its decision with regard to documents bearing Rule 65ter numbers 7389 (MFI P630) and 7402 pending receipt of their English translation. Further, given that the Prosecution has failed to show the relevance of the document bearing Rule 65ter number 7390, the Trial Chamber denies its request to add it to the Exhibit List.

### **B. Admissions into evidence sought during Višnja Bilić’s testimony**

15. During the testimony of Višnja Bilić, the Prosecution specifically requested the admission into evidence of documents bearing the following Rule 65ter numbers<sup>22</sup>: 2004,<sup>23</sup> 2008,<sup>24</sup> 2009,<sup>25</sup> 2010,<sup>26</sup> 2012,<sup>27</sup> 2013,<sup>28</sup> 2016,<sup>29</sup> 2017,<sup>30</sup> 7278,<sup>31</sup> 7357,<sup>32</sup> 7360,<sup>33</sup> 7361,<sup>34</sup> 7362,<sup>35</sup> 7363,<sup>36</sup> 7369,<sup>37</sup> 7373,<sup>38</sup> 7374,<sup>39</sup> 7375,<sup>40</sup> 7379,<sup>41</sup> 7381,<sup>42</sup> 7382 through 7412,<sup>43</sup> 7413,<sup>44</sup> and 7414.<sup>45</sup> The Prosecution

<sup>21</sup> Documents bearing Rule 65ter numbers 7382-7388, 7391-7401 and 7403-7412.

<sup>22</sup> See Hearing of 18 November 2008, T. 11811-11813; Hearing of 19 November 2008, T. 11892.

<sup>23</sup> “Missing person file of Krunoslav Golac”.

<sup>24</sup> “Missing person file of Đuro Sluganović”.

<sup>25</sup> “Missing person file of Nikola Mihaljević”.

<sup>26</sup> “Missing person file of René Matoušek”.

<sup>27</sup> “Missing person file of Marko Ribičić”.

<sup>28</sup> “Missing person file of Branko Jovanović”.

<sup>29</sup> “Missing person file of Zdravko Vladislavljević”.

<sup>30</sup> “Missing person file of Karlo Crk”.

<sup>31</sup> “Curriculum vitae of Višnja Bilić”.

<sup>32</sup> “Sample questionnaire by Commission for Detained and Missing Persons”.

<sup>33</sup> “Data of Exhumed and identified mortal remains in counties”.

<sup>34</sup> “Analysis of data on missing persons (1.076) Overview of the data as of 01-Jul-08”.

<sup>35</sup> “Analysis of data on exhumed and identified mortal remains - Overview of the data as of 01-Jul-08”.

<sup>36</sup> “Analysis of data on prisoners (7666) The Ministry of Family, Defenders and Intergenerational Solidarity”.

<sup>37</sup> “Data on missing persons in Vukovar - Srijem County”.

<sup>38</sup> “List of identified persons whose mortal remains were exhumed from the Ovčara mass grave (193) – Overview of the data as of 01-Jul-08”.

<sup>39</sup> “Analysis of the Annex III of the Indictment (265 persons)”.

<sup>40</sup> “List of identified persons whose mortal remains were exhumed from the Ovčara mass grave (190) as cited in the Annex III of the Indictment – Overview of the data as of 01-Jul-08”.

<sup>41</sup> “List of identified persons exhumed from mass grave at Ovčara (3), as cited in the Annex III of the Indictment - Overview of the data as of 01-Jul-08”.

<sup>42</sup> “Analysis of the list of victims from the Annex IV of the Indictment Overview of the data as of 01-Jul-08”.

<sup>43</sup> These documents are the 31 missing person questionnaires related to individuals mentioned in Annex III to the Indictment, regarding which the Trial Chamber had stayed its decision as to their addition to the Exhibit List pending receipt of their English translations. See Višnja Bilić Expert Decision, para. 16.

<sup>44</sup> “Letter sent to Višnja Bilić soliciting a report on the detained and the missing”.

<sup>45</sup> “Report of Višnja Bilić”.

also sought the admission into evidence of all the Annexes to Višnja Bilić's expert report, though it did not identify their specific Rule 65ter numbers.<sup>46</sup>

16. The Accused contested the reliability of Višnja Bilić's expert report as well as that of its accompanying documents.<sup>47</sup> The Accused indicated however, that he did not object to the admission into evidence of the documents bearing 65ter numbers 7382 through 7412 — *i.e.*, the 31 missing person questionnaires related to individuals listed in Annex III to the Indictment.<sup>48</sup>

#### 1. Admission of Višnja Bilić's expert report

17. The Prosecution sought the admission into evidence of Višnja Bilić's expert report<sup>49</sup> along with her *curriculum vitae*<sup>50</sup> and the Prosecution 11 July 2008 letter commissioning the report.<sup>51</sup>

18. The Trial Chamber recalls that the Accused objected to Višnja Bilić's expert report on the basis that she did not have unfettered access to all of the archives of the Croatian government and that her report therefore contained incomplete information.<sup>52</sup> Višnja Bilić stated however, that she did have full access to those parts of the archives that were relevant to her expert report.<sup>53</sup> Further, regarding the Accused's objections to Višnja Bilić's impartiality,<sup>54</sup> the Trial Chamber recalls that objections to the impartiality of a witness called as an expert concern the evaluation of evidence and not its admissibility.<sup>55</sup>

19. The Trial Chamber notes that Višnja Bilić testified that she compiled the information in her expert report independently of any of her superiors and that it was based on her own direct and personal knowledge.<sup>56</sup> Specifically, she stated that her expert report was drafted using documents available to her as of 1 July 2008 in the archives of the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity, namely data regarding exhumations in Croatia and missing person questionnaires.<sup>57</sup> The Trial Chamber notes that Višnja Bilić's expert report properly limits

<sup>46</sup> Hearing of 18 November 2008, T. 11812-11813.

<sup>47</sup> Hearing of 18 November 2008, T. 11776; Hearing of 19 November 2008, T. 11871-11873.

<sup>48</sup> Hearing of 18 November 2008, T. 11811.

<sup>49</sup> Rule 65ter number 7414.

<sup>50</sup> Rule 65ter number 7278.

<sup>51</sup> Rule 65ter number 7413. *See* Hearing of 18 November 2008, T. 11777-11780; 11810.

<sup>52</sup> Hearing of 19 November 2008, T. 11871, 11878.

<sup>53</sup> Hearing of 18 November 2008, T. 11776; Hearing of 19 November 2008, T. 11871-11873.

<sup>54</sup> Hearing of 18 November 2008, T. 11819, 11839-11846, 11850-11851.

<sup>55</sup> Decision on Admission of Exhibits Presented during Testimony of Reynaud Theunens, confidential, original in French dated 24 April 2008, para. 16.

<sup>56</sup> Hearing of 18 November 2008, T. 11841.

<sup>57</sup> Hearing of 18 November 2008, T. 11778-11779, 11837-11841; Hearing of 19 November 2008, T. 11887-11892.

itself to the scope of her expertise and that she detailed the sources and methodology used in its preparation.<sup>58</sup>

20. In light of the foregoing, the Trial Chamber considers Višnja Bilić's expert report to be sufficiently reliable and pertinent to be admitted into evidence. Similarly, and for the sake of completeness, Višnja Bilić's *curriculum vitae* and the letter commissioning her expert report should be admitted into evidence in conjunction with her expert report. The Registrar should thus assign these documents exhibit numbers.

## 2. Admission of the Annexes to Višnja Bilić's expert report

21. The Annexes to Višnja Bilić's expert report, which bear Rule 65ter numbers 7348 through 7381,<sup>59</sup> can be categorised into four broad categories: (i) Croatian government decrees and decisions which regulate the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity;<sup>60</sup> (ii) blank model missing person questionnaires;<sup>61</sup> (iii) data and analysis concerning exhumations and missing persons in Croatia that are the bases for the conclusions in Višnja Bilić's expert report;<sup>62</sup> and (iv) comparisons between the data presented in Višnja Bilić's expert report and the lists of victims put forth by the Prosecution in Annexes III and IV to the Indictment.<sup>63</sup>

22. The Trial Chamber notes that documents in categories (i) and (ii) are official government decrees that detail the organisational structures of the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity as well as the sample missing person questionnaires that underlie that Ministry's work.

23. The Trial Chamber notes that documents in category (iii) consist of the data upon which the conclusions in Višnja Bilić's expert report are based, including the number and locations of identified mass graves and information about missing persons broken down by the victims' status, gender, age and nationality, among others. The Trial Chamber notes that Višnja Bilić addressed a

<sup>58</sup> Hearing of 18 November 2008, T. 11777-11810, 11837-11841; Hearing of 19 November 2008 11887-11892.

<sup>59</sup> See Prosecution Submission of the Report of Ms. Višnja Bilić Pursuant to Rule 94 bis and Motion for Leave to amend the Rule 65ter Exhibit List, Annexes C and D, 3 November 2008.

<sup>60</sup> See documents with 65ter numbers: 7348, 7349, 7350, 7351, 7352, 7353, 7354, 7355, 7356.

<sup>61</sup> See documents with 65ter numbers: 7357, 7358.

<sup>62</sup> See documents with 65ter numbers: 7359, 7360, 7361, 7362, 7363, 7364, 7365, 7366, 7367, 7368, 7369, 7370, 7371, 7372, 7373.

<sup>63</sup> See documents with 65ter numbers: 7374, 7375, 7376, 7377, 7378, 7379, 7380, 7381.

number of these documents at length during her testimony and sufficiently detailed the methodology by which the information was collected to establish its reliability.<sup>64</sup>

24. Documents in category (iv) detail the overlaps between the individuals for whom information exists in the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity and those listed in Annexes III and IV to the Indictment. As indicated *supra*, the Trial Chamber considers that the data presented in Višnja Bilić's expert report provides sufficient indicia of reliability and finds pertinent its side-by-side comparison with the lists of victims in Annexes III and IV to the Indictment.

25. In light of the foregoing, the Trial Chamber finds that the Annexes to Višnja Bilić's expert report are sufficiently reliable and pertinent to be admitted into evidence and instructs the Registrar to assign them exhibit numbers.

3. Admission of six missing person questionnaires of individuals listed in Annex IV to the Indictment

26. The Prosecution sought the admission into evidence of six missing person questionnaires, including their exhumation reports, from the archives of the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity, bearing Rule 65ter numbers 2004,<sup>65</sup> 2008,<sup>66</sup> 2009,<sup>67</sup> 2010,<sup>68</sup> 2016<sup>69</sup> and 2017.<sup>70</sup> During her testimony, Višnja Bilić stated that the names of the six individuals for whom these missing person questionnaires were submitted match those of the six Velepromet victims listed in Annex IV to the Indictment.<sup>71</sup> The Trial Chamber considers these six missing person questionnaires sufficiently reliable and pertinent to be admitted into evidence and instructs the Registrar to assign them exhibit numbers.

4. Admission of two missing person questionnaires of individuals listed in Annex III to the Indictment

27. The Prosecution also sought the admission into evidence of two missing person questionnaires from the archives of the Croatian Ministry of the Family, Veterans Affairs and

<sup>64</sup> See e.g., Hearing of 18 November 2008, T. 11777-11810.

<sup>65</sup> "Missing person file of Krunoslav Golac".

<sup>66</sup> "Missing person file of Đuro Sluganović".

<sup>67</sup> "Missing person file of Nikola Mihaljević".

<sup>68</sup> "Missing person file of René Matoušek".

<sup>69</sup> "Missing person file of Zdravko Vladisavljević".

<sup>70</sup> "Missing person file of Karlo Crk".

<sup>71</sup> Hearing of 18 November 2008, T. 11809-11810. Compare Annex to Višnja Bilić expert report with Rule 65ter number 7381 "Analysis of the list of victims from the Annex IV of the Indictment Overview of the data as of 01-Jul-08" with Annex IV to the Indictment.

Intergenerational Solidarity, bearing Rule 65ter numbers 2012<sup>72</sup> and 2013.<sup>73</sup> While these two missing person questionnaires documents do not include exhumation reports, Višnja Bilić indicated during her testimony that the names of the two individuals for whom these missing person questionnaires were submitted match those of two of the Ovčara victims listed in Annex III to the Indictment.<sup>74</sup> The Trial Chamber considers these two missing person questionnaires to be sufficiently reliable and pertinent to be admitted into evidence and instructs the Registrar to assign them exhibit numbers.

5. Admission of 31 additional missing person questionnaires of individuals listed in Annex III to the Indictment

28. As indicated *supra*, the Prosecution also sought the admission into evidence of an additional 31 missing person questionnaires — bearing Rule 65ter numbers 7382 through 7412 — from the archives of the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity that concern individuals listed as Ovčara victims in Annex III to the Indictment. However, in light of its previous conclusions, as detailed in paragraphs 13 and 14 *supra*, the Trial Chamber considers that it need only address the requests for admission into evidence of the 28 Missing Person Questionnaires.

29. The Trial Chamber recalls that the Accused consented to the admission into evidence of the 28 Missing Person Questionnaires during the 18 November 2008 hearing.<sup>75</sup>

30. The Trial Chamber notes that Višnja Bilić identified the 28 Missing Person Questionnaires as official missing person documents.<sup>76</sup> The Trial Chamber further notes that the 28 Missing Person Questionnaires were translated into English and contain information that corresponds to the names and birth years of victims listed by the Prosecution in Annex III to the Indictment.

31. In light of the foregoing, the Trial Chamber considers that the 28 Missing Person Questionnaires are sufficiently reliable and pertinent to be admitted into evidence and instructs the Registrar to assign them exhibit numbers.<sup>77</sup>

<sup>72</sup> “Missing person file of Marko Ribičić”.

<sup>73</sup> “Missing person file of Branko Jovanović”.

<sup>74</sup> Hearing of 18 November 2008, T. 11806-11811. *Compare* Annex to Višnja Bilić expert report with Rule 65ter number 7375 “List of identified persons whose mortal remains were exhumed from the Ovčara mass grave (190) as cited in the Annex III of the Indictment – Overview of the data as of 01-Jul-08” with Annex III to the Indictment.

<sup>75</sup> Hearing of 18 November 2008, T. 11811.

<sup>76</sup> Hearing of 18 November 2008, T. 11811.

<sup>77</sup> Documents bearing Rule 65ter numbers 7382-7388, 7391-7401 and 7403-7412.

**C. Admissions into evidence sought during Anna-Maria Radić's testimony**

32. During the testimony of Anna-Maria Radić, the Prosecution sought the admission of her expert report, including its accompanying Annexes, bearing Rule 65ter number 7415. The Trial Chamber deferred its ruling on the document's admission during the hearing of 20 November 2008 and marked it as MFI P632.<sup>78</sup>

33. The Trial Chamber recalls that Anna-Maria Radić's expert report concerns the issue of displaced persons and refugees in Croatia and was drafted using information at her disposal as the director of the Directorate for Areas Outside Areas of Special State Concern (previously the Directorate for Displaced, Returnees and Refugees) of the Croatian Ministry of Regional Development, Forestry and Water Management. Further, annexed to her expert report are 11 tables that present the data and sources underlying the analyses formulated therein.

34. The Trial Chamber recalls that the Accused contested the impartiality of Anna-Maria Radić's expert report given that she was nominated by the Croatian government following a request by the Prosecution for an expert witness on the issue of displaced persons and refugees.<sup>79</sup> The Trial Chamber reiterates however, that objections to the impartiality of a witness called as an expert concern the evaluation of evidence and not its admissibility.<sup>80</sup> Further, Anna-Maria Radić stated that she was independent in drafting her expert report and described the methodology and sources used in its creation.<sup>81</sup>

35. The Trial Chamber notes that Anna-Maria Radić sufficiently detailed the analyses presented in her expert report, and the relevance of the information contained in its Annexes, to establish its reliability and pertinence. The Trial Chamber considers however, that certain portions of Anna-Maria Radić's expert report do contain statements that fall outside the purview of her expertise. In particular, some of Anna-Maria Radić's characterisations in part 11 of her report go beyond her expertise and may infringe on issues that are to be resolved by the Trial Chamber. Thus, the Trial Chamber will not, for example, take into account Anna-Maria Radić's characterisation of an event as a "terrible massacre and genocide".<sup>82</sup> The Trial Chamber recalls that expert witnesses may not

<sup>78</sup> Hearing of 20 November 2008, T. 11969.

<sup>79</sup> Hearing of 20 November 2008, T. 11996-11999.

<sup>80</sup> Decision on Admission of Exhibits Presented during Testimony of Reynaud Theunens, confidential, original in French dated 24 April 2008, para. 16. *See also* Hearing of 20 November 2008, T. 12002.

<sup>81</sup> Hearing of 20 November 2008, T. 11969.

<sup>82</sup> *See e.g.*, MFI P632 "Expert report of Anna-Maria Radić with Annexes" (English version) p. 37; *see also* p. 38 (stating that "[m]assacres of civilians in Banija continued in the villages around Petrinja, and one of the biggest massacres was carried out by Serbian terrorists over inhabitants of Skela settlement").

make determinations on the ultimate issues that the Trial Chamber will be called upon to settle.<sup>83</sup> Accordingly, while her expert report and its Annexes will be admitted into evidence and be assigned exhibit numbers by the Registrar, those parts of Anna-Maria Radić's expert report that the Trial Chamber considers to fall outside of her field of expertise will ultimately not be taken into account.

## V. DISPOSITION

36. Accordingly, the Trial Chamber, pursuant to Rule 65ter of the Rules,

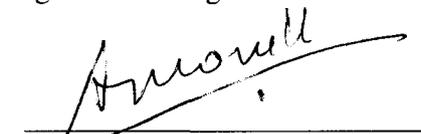
(i) **GRANTS** the Prosecution leave to add documents bearing Rule 65ter numbers 7382 through 7388, 7391 through 7401, and 7403 through 7412 to the Exhibit List;

(ii) **STAYS ITS RULING** as to the addition to the Exhibit List of documents bearing Rule 65ter numbers 7389 (MFI P630) and 7402 pending receipt of their English translations; and

(iii) **DENIES** the Prosecution leave to add document bearing Rule 65ter number 7390 to its Exhibit List.

37. Further, the Trial Chamber, pursuant to Rule 89 of the Rules, **ORDERS** that documents bearing Rule 65ter numbers 2004, 2008 through 2010, 2012, 2013, 2016, 2017, 7278, 7348 through 7388, 7391 through 7401, and 7403 though 7415 (MFI P632) be admitted into evidence and **INSTRUCTS** the Registrar to assign these documents exhibit numbers.

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



Judge Jean-Claude Antonetti  
Presiding

Dated this twenty-ninth day of January 2009  
At The Hague  
The Netherlands

**[Seal of the Tribunal]**

<sup>83</sup> Decision on Admission of Exhibits Presented during Testimony of Yves Tomić, original in French dated 3 April 2008, para. 7.