



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-03-69-PT
Date: 18 March 2008
Original: English

IN TRIAL CHAMBER III

Before: Judge Patrick Robinson, Presiding
Judge Pedro David
Judge Michèle Picard

Registrar: Mr. Hans Holthuis

Decision of: 18 March 2008

PROSECUTOR

v.

**JOVICA STANIŠIĆ
AND
FRANKO SIMATOVIĆ**

PUBLIC

**DECISION ON PROSECUTION'S SUBMISSION OF
THE EXPERT REPORT OF NENA TROMP AND
CHRISTIAN NIELSEN PURSUANT TO RULE 94 *BIS***

The Office of the Prosecutor

Mr. Dermot Groome
Ms. Doris Brehmeier-Metz
Mr. John Docherty
Mr. Gregory Townsend

Counsel for the Accused

Mr. Geert-Jan Alexander Knoops and Mr. Wayne Jordash for Jovica Stanišić
Mr. Zoran Jovanović and Mr. Vladimir Domazet for Franko Simatović

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 seized of the “Prosecution’s Submission of the Expert Report of Nena Tromp and Christian Nielsen Pursuant to Rule 94 *bis* with Annexes A and B”, filed 9 July 2007, in which it provided the Trial Chamber with an updated report by Christian Nielsen and Nena Tromp, entitled “The Organisation of Internal Affairs within the Serbian Entities in the Former Yugoslavia (1990-1995)” (“Report”). This report had previously been filed in the case of the *Prosecutor v Momčilo Krajišnik* and was disclosed to the Defence in this case on 21 February 2006. An addendum to the report was disclosed on 23 February 2007. The Annexes to the report contained documents supporting the report. On 2 July 2007, the Prosecution also filed the “Prosecution’s Submission of the Expert Report of Christian Nielsen pursuant to Rule 94 *bis* with Annexes A and B”, in which it submitted a report by Christian Nielsen. The filing of 9 July 2007 clarified that the report by Christian Nielsen and Nena Tromp was “an update and extension of the previous report”. On 27 July 2007, the Prosecution filed the “Prosecution Submission of Corrigendum to Expert Report of Nena Tromp and Christian Nielsen with Annex A” (Corrected Report”), in the Prosecution provided a corrected version of the Report along with a CD-Rom containing seven additional supporting documents. The Trial Chamber will decide only on the Corrected Report.

2. In its Motion, the Prosecution did not request the admission of the documents supporting the Report or the Corrected Report.

3. On 26 July 2007, the Defence for Jovica Stanišić filed the “Defence Notice Pursuant to Rule 94 *bis*”, in which it notified the Trial Chamber that, “pursuant to Rule 94*bis*(B) under (i) and (ii), it challenges [...] the report by Christian Nielsen and Nena Tromp”. On 1 August 2007, the Defence for Franko Simatović filed its “Defence Notice Pursuant to Rule 94 *bis*(B)(ii)”, in which it notified the Trial Chamber that it wished to cross-examine Christian Nielsen and Nena Tromp.

4. By decision of 27 February 2008, the Prosecution was allowed to withdraw Nena Tromp from its Rule 65 *ter* witness list. By email of 13 March 2008, the Prosecutor provided the Trial Chamber with a recent *curriculum vitae* for Christian Nielsen.

A. Admissibility of Expert Statements

5. Rule 94 *bis* of the Rules provides:

Testimony of Expert Witnesses

(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; or
- (ii) it wishes to cross-examine the expert witness; and
- (iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the statement and/or report and, if so, which parts.

(C) If the opposing party accepts the statement and/or report of the expert witness, the statement and/or report may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

6. According to Rule 94 *bis* (B) of the Rules, the opposing party is required to react to the expert statement or report tendered by the other party.¹ It shall indicate whether it accepts the expert statement or report, whether it wishes to cross-examine the expert witness and whether it challenges the qualifications of the expert witness or the relevance of all or parts of the statement or report. In any case, in order to be admissible, the expert statement or report has to meet several requirements.

7. The Tribunal's case law has established the following requirements for the admissibility of expert statements or reports:²

- (1) the witness is an expert;
- (2) the statement/report is reliable;
- (3) the statement/report is relevant and of probative value; and
- (4) the contents of the statement/report fall within the accepted expertise of the witness.

8. As a first requirement, the witness has to be an "expert". The term "expert" has been defined as "a person who by virtue of some specialised knowledge, skills or training can assist the trier of fact to understand or determine an issue in dispute".³ For the purposes of determining

¹ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C), 7 June 2002, para. 39; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Decision on Prosecution's Motion for Admission of Expert Statements, 7 November 2003.

² *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence's Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94 *bis*, 9 November 2006 ("*Martić* Decision Expert Avramov") and 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 Selukić, and on Prosecution Motion to Reconsider Order of 7 November 2006, 13 November 2006; *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-T, Decision on Report of Prosecution Expert Klaus Reinhardt, 11 February 2004 ("*Hadžihasanović* Decision Expert Reinhardt"); *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002 ("*Galić* Decision Experts Tabeau and Philipps").

³ *Galić* Decision Experts Tabeau and Philipps, p. 2. See also *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003 ("*Brđanin* Decision Expert Brown"), p. 4; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-PT, Decision on the Defence Motions to Oppose Admission of Prosecution Expert Reports Pursuant to Rule 94 *bis*, 1 April 2004, p. 4; *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92 *bis* (D) and of Expert Reports Pursuant to Rule 94 *bis*", 13 January 2006 ("*Martić* Experts Decision"), para. 37.

whether a witness meets this requirement, the witness' former and present positions and professional experience are important.⁴ The qualifications and expertise of a witness can be determined by utilising the witness' *curriculum vitae*, but also with the help of scholarly articles, other publications or any other information.⁵

9. Secondly, the expert statement or report must meet the minimum standards of reliability. There must be sufficient information as to the sources used in support of the statements. The sources must be clearly indicated and accessible in order to allow the other party or the Trial Chamber to test or challenge the basis on which the expert witness reached his or her conclusions.⁶ In the absence of clear references or accessible sources, the Trial Chamber will not treat such a statement or report as an expert opinion, but as the personal opinion of the witness, and weigh the evidence accordingly.⁷

10. An expert is expected to make statements and draw conclusions independently and impartially. The fact that the witness has been involved in the investigation and preparation of the Prosecution or Defence case or is employed or paid by one party does not disqualify him or her as an expert witness or make the expert statement or report unreliable.⁸ Concerns relating to the witness' independence or impartiality do not affect the admissibility of the witness' statement or report pursuant to Rule 94 *bis* of the Rules, but affect the weight to be given to the witness' evidence.⁹

11. Thirdly, the statement or report must be relevant and of probative value to the case. According to Rule 89(C) of the Rules, a Trial Chamber may admit any relevant evidence which it deems to have probative value. The Trial Chamber notes that Rule 94 *bis* of the Rules does not set a different or higher threshold for the admission of evidence by expert witnesses than the standard admissibility requirements enshrined in Rule 89(C) of the Rules.¹⁰

12. Fourthly, the content of the statement or report must fall within the expertise of the expert witness.¹¹ This requirement ensures that the statements or reports of an expert witness will only

⁴ *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21-A, Order on Motion of Esad Landžo to Admit as Additional Evidence the Opinion of Francisco Villalobos Brenes, 14 February 2000 (“*Delalić Decision Expert Villalobos Brenes*”), p. 3; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-T, Decision on Admissibility of Expert Report of Kosta Čavoški, 1 March 2006 (“*Slobodan Milošević Decision Expert Čavoški*”), pp. 2-3.

⁵ *Slobodan Milošević Decision Expert Čavoški*, p. 3.

⁶ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision on the Prosecution Motion for Reconsideration of the Admission of the Expert Report of Prof. Radinovij, 21 February 2003 (“*Galić Decision Expert Radinovij*”), para. 9.

⁷ *Martić Decision Expert Avramov*, para. 9.

⁸ *Galić Decision Experts Tabeau and Philipps*, p. 2; *Brdanin Decision Expert Brown*, p. 4; *Martić Experts Decision*, para. 39.

⁹ *Slobodan Milošević Decision Expert Čavoški*, p. 2; *Brdanin Decision Expert Brown*, p. 4.

¹⁰ *Brdanin Decision Expert Brown*, p. 4.

¹¹ *Martić Decision Expert Avramov*, para. 12. See also *Delalić Decision Expert Villalobos Brenes*, p. 3.

be treated as expert evidence, in so far as they are based on the expert's specialised knowledge, skills or training. Statements that fall outside the witness' expertise will be treated as personal opinions of the witness and will be weighed accordingly. Generally, an expert witness shall not offer his or her opinion on the criminal liability of the accused. This is a matter that falls within the competence of the Chamber.¹²

B. Discussion

13. In their responses, the Defence for Jovica Stanišić and Franko Simatović do not challenge the qualifications of Christian Nielsen and Nena Tromp as experts. In their responses to the motion of the Prosecution to withdraw Nena Tromp from its Rule 65 *ter* witness list the Defence for both Accused did not maintain their position that they wished to cross-examine Nena Tromp. The Prosecution's Motion to withdraw Nena Tromp was granted by the Trial Chamber and she will therefore not be required to appear for cross-examination.

14. The report is properly referenced and meets the reliability requirements. It pertains to the internal structure of ministries of Internal Affairs in the former Yugoslavia, including the structure and functioning of security services or security divisions during the Indictment period. More specifically, the report provides information as to the mentioned structures within the Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia, the Republic of Serbia, the Republic of Serbian Krajina and the Republika Sprska. Therefore, the report is relevant and of probative value for this case.

15. As regards Christian Nielsen, neither the Defence for Jovica Stanišić nor the Defence for Franko Simatović indicated that it challenged the qualifications of this witness as an expert. The Defence for both Accused have indicated that they wish to cross-examine the witness. In light of these submissions Christian Nielsen will appear in court for cross-examination.

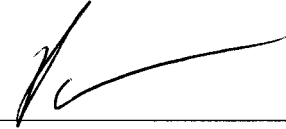
16. The *curriculum vitae* of Christian Nielsen showed a particular expertise relevant for this case. The content of the report falls within that expertise. However, considering that the trial in this case has not yet commenced, the Trial Chamber will defer its decision on admissibility of the report until he appears for cross-examination.

¹² *Hadžihasanović* Decision Expert Reinhardt, p. 4; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, Oral Decision of 22 July 2004, T. 12109-12111.

C. Disposition

17. For the foregoing reasons, the Trial Chamber **DEFERS** its decision on admission into evidence of the Corrected Report and **ORDERS** the Prosecution to call Christian Nielsen to appear for cross-examination.

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



Judge Patrick Robinson
Presiding Judge

Dated this eighteenth day of March 2008

At The Hague

The Netherlands

[Seal of the Tribunal]