



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: IT-98-29-T
Date: 3 July 2002
Original: English

IN THE TRIAL CHAMBER

Before: Judge Alphons Orie, Presiding
Judge Amin El Mahdi
Judge Rafael Nieto-Navia

Registrar: Mr Hans Holthuis

Decision of: 3 July 2002

PROSECUTOR

v.

STANISLAV GALIĆ

**DECISION CONCERNING THE EXPERT WITNESSES
EWA TABEAU AND RICHARD PHILIPPS**

Office of the Prosecutor:

Mr. Mark Ierace

Counsel for the Defence:

**Ms. Mara Pilipović
Mr. Stéphane Piletta-Zanin**

TRIAL CHAMBER I, Section B 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 (“International Tribunal”);

NOTING that the Prosecution submitted as statements pursuant to Rule 94 *bis*, a research report called “Population losses in the ‘Siege’ of Sarajevo 10 September 1992 to 10 August 1994” prepared by Ewa Tabeau, Marcin Zoltkowski and Jakub Bijak filed on 13 May 2002, complemented by two addenda filed on 14 May 2002 and 6 June 2002 and a research report called “Sarajevo Romanija Corps Structure” prepared by Richard Philipps and filed on 17 May 2002; and that the Prosecution expressed its intention to call Ewa Tabeau and Richard Philipps as expert witnesses;

NOTING the Motion of the Defence filed on 7 June 2002 (“the Motion”), in which the Defence, having noted that the Rules of Procedure and Evidence of the Tribunal do not define what an expert witness is, argues that Richard Philipps and Ewa Tabeau are not impartial because they are staff members of the Office of the Prosecutor, that the role of expert testimony in criminal proceedings may be crucial to the determinations to be made by a Trial Chamber and that therefore Richard Philipps and Ewa Tabeau disqualify as experts;

NOTING the “Prosecution’s Response to the Request by the Defence for a Decision Concerning two Expert Witnesses’ Reports Submitted under Rule 94 *bis*” dated 17 June 2002 in which the Prosecution responds that (i) the “grounds of objection raised by the Defence deal with matters relevant to the evaluation of evidence and not admissibility of evidence”, (ii) the reports of the witnesses have been prepared on the basis of their expertise and qualifications, not disputed by the Defence, in their respective fields, and (iii) the “contractual relationship that exists between the two Experts Witnesses and the OTP does not render them unreliable”;

CONSIDERING that, under Rule 94 *bis* (A), “[t]he full statement 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”; that this Trial Chamber accepts, in accordance with the commonly accepted meaning of this word, an “expert (witness)” to be a person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute (and to that end testifies);

CONSIDERING that an expert witness is expected to give his or her expert opinion in full transparency of the established or assumed facts he or she relies upon and of the methods used when applying his or her knowledge, experience or skills to form his or her expert opinion; and that

the mere fact that the expert witness is employed by or paid by a party or a party related agency does not disqualify him or her to be called and testify as an expert witness;

CONSIDERING that it is to the Trial Chamber to assess the evidentiary value of reports and testimony of expert witnesses taking into account all relevant factors;

CONSIDERING that the party calling the expert witness should satisfy the Trial Chamber that the expert witness has at his or her disposal the special knowledge, experience, or skills needed to potentially assist the Trial Chamber in its understanding or determination of issues in dispute;

CONSIDERING that the Prosecution has fulfilled this obligation given that Richard Philipps and Ewa Tabeau are well-credentialed; that, in addition, the qualifications of Richard Philipps and Ewa Tabeau in respect of their knowledge, experience or skills are not challenged by the Defence;

CONSIDERING that the Defence will have the opportunity to cross-examine the expert witnesses Richard Philipps and Ewa Tabeau; that the Defence is allowed to have its experts present in the courtroom to assist it in understanding the testimony of any expert witness and to prepare for cross-examination in respect of, for instance, the methodology, theory or technique used by the expert to form his or her opinion;

CONSIDERING further that the Defence is entitled to submit counter-expertise and to call its own expert witnesses during the presentation of its case;


FINDING therefore that the fairness of the trial would not be affected if Ewa Tabeau and Richard Philipps were called as expert witnesses;

PURSUANT TO Article 21 of the Statute, and Rules 89 and 94 *bis* of the Rules of Procedure and Evidence;

FOR THE FOREGOING REASONS,

REJECTS the Motion and **ALLOWS** the Prosecution to call Ewa Tabeau and Richard Philipps as expert witnesses.

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



Alphons Orié
Presiding Judge

Done this 3rd Day of July 2002
At The Hague,
The Netherlands.

[Seal of the Tribunal]