



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-02-54-T
Date: 7 December 2005
Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 7 December 2005

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

DECISION ON ADMISSIBILITY OF EXPERT REPORT OF VASILJIJE KRESTIĆ

Office of the Prosecutor:

Ms. Carla Del Ponte
Mr. Geoffrey Nice

The Accused:

Mr. Slobodan Milošević

Court Assigned Counsel:

Mr. Steven Kay, QC
Ms. Gillian Higgins

Amicus Curiae:

Prof. Timothy McCormack

THIS 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 (“the International Tribunal”), is seized of a confidential “Prosecution’s Notice Pursuant to Rule 94 *bis*”, filed on 15 July 2004 (“Motion”), concerning the report of the proposed expert witness, Vasilije Krestić, filed on 2 July 2004 (“Report”),

1. The Report is entitled “Serbo-Croatian Conflicts – Causes and Effects”, is a historical analysis to the break-up and conflict in the SFRY, and it deals with the following issues:
 - (a) The common history of Croats and Serbs in Croatia has been characterised by a long-standing conflict going back to the 16th and 17th centuries.
 - (b) The main cause of the conflict revolves around the policy embraced by prominent Croats to create a Croatian state with a homogeneous Croatian “political” people, i.e. an ethnically pure Croatia or “Greater Croatian” policy, and that they had received assistance in this from other powers, including the Vatican which had assisted them in their ethnic cleansing operations.
 - (c) This “one state, one nation, one language” was to be achieved by all possible means; so, when ethnic Serbs resisted the eradication of their identity (ethnocide), Croatian politicians opted for physical destruction of the Serbs (genocide) during World War II.
 - (d) Since Yugoslavia stood in the way of an ethnically pure Croatia, Croatian rulers, chiefly Tudman, decided to destroy Yugoslavia; Croats are therefore responsible for the break-up of Yugoslavia and its consequences.

2. The Prosecution argues in its Motion that the Report should be dismissed in its entirety on the basis, *inter alia*, that its content is irrelevant, in that (1) there is no “discernible connection” between the Report and the events relevant to the indictment; (2) that the Report sheds little light on the context “in which the crimes alleged in the indictments occurred or did not occur”, and (3) the only possible connection between the Report and a possible case for the Accused is “a sort of historical *tu quoque*”. Furthermore, the Prosecution argues that Professor Krestić is biased such that he is unqualified to offer expert evidence to the Trial Chamber. In the event that the Prosecution admits the Report, the Prosecution indicates its wish to cross-examine Professor Krestić.

3. The Amici Curiae filed their “Response to Prosecution’s Notice Pursuant to Rule 94 *bis* Filed 15 July 2004” (“Response”), in which they submit, *inter alia*, that the Report is relevant in that (1) it deals with a number of issues raised by the Prosecution during the presentation of its case (relating to “Greater Serbia”, Serbia’s territorial ambitions, dissolution of the SFRY, and the role of leading individuals in that dissolution); (2) it presents the Chamber with background in relation to the historical, socio-economic and cultural history of the relationship between the Serbs and Croats and contextualises pre-conflict pretensions preceding the conflict.
4. Rule 94 *bis* (B) of the Rules of Procedure and Evidence (“Rules”) provides for the Prosecution to file a notice indicating whether
 - (i) it accepts the expert witness statement; 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 report and, if so, which parts.

The Prosecution has raised a challenge pursuant to Rule 94 *bis* (B) (iii) and has indicated its intention to cross-examine pursuant to Rule 94 *bis* (B) (ii). The Trial Chamber must therefore determine whether the qualifications of the witness as an expert have been established and the relevance of the Report, in full or in part.

5. Professor Krestić is a scholar in historical science and a member of the Serbian Academy of Sciences and Arts. The Prosecution has called into question his independence, arguing that it is common knowledge that the witness was, and still is, closely associated with the Accused. It is true that the methodology of the Report is questionable in a number of respects: for example, it contains sweeping conclusions without analysis and is poorly referenced. However, these are matters that may be said to go to the weight that the evidence is given and could be adequately addressed by the Prosecution in cross-examination. The “Biography of Vasilije Krestić” appended to his Report shows that he is clearly qualified to testify as an expert. The closeness, if any, of Professor Krestić to the Accused is a matter the Prosecution could explore in cross-examination, but it has not established the existence of a relationship such that he would be disqualified from testifying. The Chamber is of the view that Professor Krestić is sufficiently qualified and can envisage circumstances in which he could testify before it as an expert.

6. The Report is, however, ostensibly a reverse indictment for crimes alleged to have been committed by Croats against the Serbs in Croatia. The Report contains nothing of direct relevance to the alleged criminal responsibility of the Accused. It does not, in fact, address issues raised by the Prosecution, such as “Greater Serbia” or Serbia’s territorial ambitions, but instead is about a “Greater Croatia” policy, Croatian territorial ambitions and persecution of the Serbs by the Croats dating back to the mid-19th century and during World War II. The Report, while briefly touching upon the dissolution of the SFRY, proceeds merely to make conclusions that are properly findings which the Trial Chamber would have to make on the basis of evidence of what occurred. The Report could really only be of relevance were *tu quoque* a defence open to the Accused. The Trial Chamber is of the view that the content of the Report, in light of the stage the proceedings have now reached, is of such little relevance, if any, that it should not be admitted into evidence and Professor Krestić should not be called as a witness in the Accused’s case.

PURSUANT TO Rules 94 *bis* and 54 of the Rules

HEREBY GRANTS the Prosecution Motion for the dismissal of the Report in its entirety.

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



Judge Robinson
Presiding

Dated this seventh day of December 2005
At The Hague
The Netherlands

[Seal of the Tribunal]