



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: 24 January 2008

Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr Hans Holthuis

Decision of: 24 January 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION REGARDING THE ADMISSION OF EVIDENCE PRESENTED
DURING THE TESTIMONY OF ANTHONY OBERSCHALL**

The Office of the Prosecutor

Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

I. INTRODUCTION

1. 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”) is seized of the request to tender into the record evidence presented by the Office of the Prosecutor (“Prosecution”) and Vojislav Šešelj (“Accused”) during the testimony of Anthony Oberschall on 11, 12 and 13 December 2007.

II. PROCEDURAL BACKGROUND

2. On 30 November 2007, the Chamber refused to grant Witness Anthony Oberschall the status of expert but decided nonetheless to hear him as a Prosecution witness.¹ The Chamber indicated that if the Prosecution wished for the document then designated as an “Expert Report”, along with its two *addenda*, to be introduced into evidence as an exhibit, in whole or in part, the same criteria used for any other evidence would be applied. Accordingly, the Chamber stayed its ruling on the admission of this document.²

3. On 10 December 2007, the Prosecution filed additional materials concerning Anthony Oberschall (“Additional Materials”).³

4. On 11 December 2007, the Chamber recalled that it would rule on the probative value of the “Expert Report”, now designated as the “Report”, only after hearing the testimony of Anthony Oberschall in its entirety.⁴ In direct examination, the Prosecution requested the admission of the following documents into evidence:

¹ Decision on Anthony Oberschall’s Status as an Expert, 30 November 2007, p. 4 (“Decision of 30 November 2007”).

² Decision of 30 November 2007, pp. 4, 5.

³ Prosecution’s Notice of Filing Additional Materials Concerning Dr. Anthony Oberschall. On the content of the Additional Materials, *see infra*, para. 9. The Chamber notes that the Accused complained that he had not received the Additional Materials in a language he understands; *see the Accused’s Submission 362* dated 17 December 2007 and filed 2 January 2008, para. 4. He nonetheless received them on 12 December 2007, *see Procès-verbal of reception of documents*, dated 12 December 2007 and signed by the Accused.

⁴ Hearing of 11 December 2007, Transcript in French (“T(F)”) 1950, 1951.

- (1) 65 *ter* number 2797, marked for identification (“MFI P5”):⁵ Report with its annexes (“Report”);
- (2) 65 *ter* number 7000 marked for identification (“MFI P4”):⁶ *Addendum I* to the Report (“*Addendum I*”);
- (3) 65 *ter* number 2875 marked for identification (“MFI P3”):⁷ *Addendum II* to the Report (“*Addendum II*”);
- (4) 65 *ter* number 7001 marked for identification (“MFI P15”):⁸ Supplement to the Report (“*Supplement I*”);
- (5) 65 *ter* number 6011 marked for identification (“MFI P16”):⁹ Video Clip G (“Video Clip G”); and
- (6) 65 *ter* number 6058 marked for identification (“MFI P19”):¹⁰ Video Clip B (“Video Clip B”).

5. On 13 December 2007, the Accused requested that the following documents be tendered into evidence:

- (1) A text dated 5 December 1990 authored by the Accused and titled “Call to the Serbs of Islamic Faith”¹¹ marked for identification “MFI D1” (“Article”);¹² and
- (2) The response to *Addendum II* submitted by the Accused on 26 November 2007 and marked for identification “MFI D2” (“Response”).¹³

⁵ Hearing of 11 December 2007, T(F) 1985.

⁶ Hearing of 11 December 2007, T(F) 1986.

⁷ Hearing of 11 December 2007, T(F) 1986.

⁸ Hearing of 11 December 2007, T(F) 2019, 2021.

⁹ Hearing of 11 December 2007, T(F) 2024.

¹⁰ Hearing of 12 December 2007, T(F) 2063.

¹¹ English Translation of BCS original “Call to the Serbs of Islamic Faith”.

¹² Hearing of 13 December 2007, T(F) 2202, 2228.

¹³ Hearing of 13 December 2007, T(F) 2202, 2228.

III. APPLICABLE LAW

6. Any admission of evidence must comply with Rule 89 of the Rules of Procedure and Evidence (“Rules”) and follow the procedure established in the Order of 15 November 2007 setting out the guidelines designed to govern the presentation of evidence and the conduct of the Parties at trial (“Guidelines”).

7. The Chamber recalls that at this stage of the proceedings, it need not make a final assessment of the relevance, reliability or probative value of the evidence. That exercise will be carried out only at the end of the trial, in the light of all the evidence, both for the Prosecution and the Defence, that has been tendered into the record.¹⁴

8. The Chamber considers that a filing submitted by a party may not be admitted as evidence, *a fortiori* when the filing has been dismissed.

IV. DISCUSSION

A. Anthony Oberschall’s Expert Status

9. The Chamber notes that the Additional Materials contain an updated version of Anthony Oberschall’s *curriculum vitae*, certain parts of a book he authored (cover, first page, publication information, table of contents, back cover) that was published in March 2007 on conflicts, building peace in divided societies and responses to ethnic violence¹⁵ and a letter from one of Anthony Oberschall’s editors¹⁶ regarding an article about the manipulation of “ethnicity” that was published in November 2002, to which the article is also attached.¹⁷

¹⁴ *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.

¹⁵ Conflict and Peace Building in Divided Societies, Responses to Ethnic Violence.

¹⁶ The journal is titled “Ethnic and Racial Studies”.

¹⁷ The Manipulation of Ethnicity: From Ethnic Cooperation to Violence and War in Yugoslavia.

10. In direct examination, the Prosecution noted this information related to Anthony Oberschall's qualifications and added the fact that he made three trips to the former Yugoslavia.¹⁸

11. The Chamber finds that the Prosecution failed to use the legal procedures set out in the Rules¹⁹ and jurisprudence²⁰ to challenge the Decision of 30 November 2007 in respect of Anthony Oberschall's status as an expert, but considers that in any case, neither the Additional Materials nor the supplementary information presented during the examination of the witness would be likely to modify the Chamber's decision in this regard.

12. After hearing Anthony Oberschall, the Chamber remains convinced that he does not have the status of expert within the meaning of Rule 94 *bis* of the Rules.

B. Admission of Evidence Presented by the Prosecution

1. The Report and Addenda I and II

13. The Chamber notes that the Accused did not object to the admission of these documents into evidence.²¹ The Chamber considers therefore that the Report and *Addenda I and II* may be admitted under Rule 89 (C) of the Rules.

14. The Chamber must insist on the fundamental distinction that exists between the legal admissibility of documentary evidence, the probative value and the weight that the Chamber attaches to it in light of the entire record.²² Moreover, in the final determination of the probative value of this evidence, the Chamber will take into account the distinctive characteristics of this testimony in which the expert status was

¹⁸ Hearing of 11 December 2007, T(F) 1962, 1963.

¹⁹ See Rule 72 (B) (ii) of the Rules providing for certification to appeal.

²⁰ Provision is made for the procedure of reconsideration when certain conditions, such as a clear error or particular circumstances, have been met in order to avoid an injustice. See in this respect Decision on Prosecution Motion for Reconsideration of the Decision on Protective Measures of 30 August 2007, 16 October 2007, pp. 1 and 2 citing *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Borislav Pušić*, Case No. IT-04-74-T, Decision on Request for Reconsideration and Certification to Appeal the Decision for Admission of the Statement of Jadranko Prlić, 8 October 2007, p. 11.

²¹ Hearing of 11 December 2007, T(F) 1985.

²² See Guidelines, Annex, para. 2.

denied prior to the hearing of the witness and in which the denial of this status was confirmed after his hearing.

2. Supplement

15. The Chamber notes that this is the “Supplement to the Expert Report” filed by the Prosecution on 29 November 2007,²³ which was dismissed by the Chamber in the Decision of 30 November 2007 on both procedural and substantive grounds²⁴ and that this filing may not be admitted into evidence.

3. Video Clip G

16. During the hearing of 11 December 2007, the showing of Video Clip G posed significant translation problems due to the speed with which the words in the clip were pronounced.²⁵ The Accused objected: (1) to the introduction of the video into evidence, since this excerpt did not directly reflect the speech he gave during a parliamentary session dated 1 April 1992 but instead was, according to him, a journalist’s interpretation of his speech,²⁶ and (2) to Witness Anthony Oberschall commenting on the journalist’s interpretation of his speech rather than on his words directly.²⁷

17. Concerning the Accused’s first objection, the Prosecution responded that the video was important because it helped in comprehending the manner in which the Accused was understood and covered in the media.²⁸ The Prosecution added that it would provide the transcripts of the television programme as well as those from the Serbian Parliament session.²⁹

18. The Chamber finds that the Prosecution failed to provide the relevant information about Video Clip G, namely the exact date when the television

²³ Prosecution’s Submission of Supplement to the Expert Report of Dr. Anthony Oberschall.

²⁴ The reason for the Chamber’s dismissal is the late filing of what was, despite the title, in part a reply to a submission from the Accused and, substantively, because the issue dealt with in the Supplement fell outside the Report’s temporal scope of application, *see* Decision of 30 November 2007, p. 2.

²⁵ Hearing of 11 December 2007, T(F) 2021.

²⁶ Hearing of 11 December 2007, T(F) 2023.

²⁷ Hearing of 11 December 2007, T(F) 2025.

²⁸ Hearing of 11 December 2007, T(F) 2026, 2027.

²⁹ Hearing of 11 December 2007, T(F) 2024, 2026.

programme aired and the television channel it aired on.³⁰ The Prosecution initially represented this video clip as a Croatian television programme from 1991 called “Picture on Picture”, reporting the Accused’s activities at a press conference.³¹ It corrected this description, however, stating that it was Video Clip G from exhibit 65 *ter* 6011, without providing any further clarification.³²

19. The Chamber consequently denies the admission into evidence of Video Clip G and the transcript of the Serbian Parliament session, subject to the Prosecution providing the Chamber and the Accused the relevant information regarding this video clip as indicated above.

4. Video Clip B

20. The Chamber notes that the Prosecution initially stated that exhibit 65 *ter* 6058 contained two video clips, introducing them as two clips dated 13 May 1993 from the Serbian television station RTS.³³ Nonetheless, when Video Clip B was shown, the Prosecution presented this video as depicting a speech the Accused made on 14 April 1992.³⁴ The Accused disputed the date pointing out that it was a speech made in 1995 during a meeting in Loznica.³⁵

21. The Chamber therefore denies the admission of Video Clip B subject to the Prosecution providing the Chamber and the Accused the exact date of the images shown in Video Clip B.

C. Admission of Evidence Presented by the Accused

22. The Chamber notes that the Prosecution did not object to the admission of the Article into evidence.³⁶ The Chamber considers therefore that this document may be admitted into evidence under Rule 89 (C).

³⁰ Hearing of 11 December 2007, T(F) 2022. With regard to the name of the programme, the video clip begins with an image where the words “*Slika na sliku*” (“Picture on Picture”) are shown.

³¹ Hearing of 11 December 2007, T(F) 2021.

³² Hearing of 11 December 2007, T(F) 2022.

³³ Hearing of 12 December 2007, T(F) 2058.

³⁴ Hearing of 12 December 2007, T(F) 2060.

³⁵ Hearing of 12 December 2007, T(F) 2062.

³⁶ Hearing of 13 December 2007, T(F) 2203.

23. As regards the Response, the Chamber notes that this submission was dismissed in the Decision of 30 November 2007³⁷ and that accordingly it may not be admitted into evidence.

V. DISPOSITION

24. For these reasons, in accordance with Rule 89 (C) of the Rules, the Chamber **ADMITS**

- (i) the Report (“Exhibit P5”)
- (ii) *Addendum I* (“Exhibit P4”)
- (iii) *Addendum II* (“Exhibit P3”) and
- (iv) the Article (“Exhibit D1”).

DISMISSES, subject to the Prosecution providing the information mentioned in paragraphs 18 and 21 above:

- (i) Video Clip G and the transcript of the Serbian Parliament session; and
- (ii) Video Clip B.

DISMISSES the request for admission of the Supplement and the Response.

³⁷ Decision of 30 November 2007, pp. 1, 2.

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

 /signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fourth day of January 2008
At The Hague
The Netherlands

[Seal of the Tribunal]