



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: 3 April 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:** 3 April 2008

**THE PROSECUTOR**

v.

**VOJISLAV ŠEŠELJ**

***PUBLIC DOCUMENT***

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**DECISION ON ADMISSION OF EVIDENCE PRESENTED DURING THE TESTIMONY  
OF YVES TOMIĆ**

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**The Office of the Prosecutor**

Mr Daryl Mundis

**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 admit into the record evidence presented by the Office of the Prosecutor (“Prosecution”) and Vojislav Šešelj (“Accused”) during the testimony of Yves Tomić on 29 and 30 January and 5 and 6 February 2008.

## II. PROCEDURAL BACKGROUND

2. In a decision of 15 January 2008,<sup>1</sup> the Chamber qualified Yves Tomić as an expert and decided to hear him in that capacity, further indicating that it would evaluate the relevance and probative value of his report only in the light of his evidence in this case, thus staying the admission of this document until the end of his testimony.<sup>2</sup>

3. During the hearing of Witness Yves Tomić (“Expert”), the Prosecution requested the admission of 25 documents into the record, including the Expert Report (“Report”), which was marked for identification as MFI P164. In cross-examination, the Accused requested the admission of six documents into the record. The Chamber has already orally admitted 18 documents submitted by the Prosecution,<sup>3</sup> while the other documents submitted by the Prosecution and those submitted by the Accused were marked for identification.<sup>4</sup>

## III. DISCUSSION

4. The Chamber has examined each of the documents on the basis of Rule 89 of the Rules of Procedure and Evidence (“Rules”) and of the admissibility criteria defined in its Order of 15

<sup>1</sup> Decision on the Qualifications of Expert Yves Tomić, 15 January 2008 (“Decision of 15 January 2008”), para. 16.

<sup>2</sup> Decision of 15 January 2008, pp. 4, 5.

<sup>3</sup> The exhibits numbered as follows were already orally admitted during the testimony of Yves Tomić: P143, “Map with markings by the Expert”, 1991; P144, “Map P143 without markings”; P145, “Map with markings by the Expert”; P146, “Map with markings by the Expert”; P147, “Map with markings by the Expert”; P148, “Map 10 of the Report”; P151, “Map 5 of the Report”; P152, “Map 6 of the Report”; P154, “Interview with Vojislav Šešelj”; P155, “Table regarding the elections”; P156, “Table regarding the elections”; P157, “Table regarding the elections”; P158, “Table regarding the elections”; P159, “Table regarding the elections”; P160, “Table regarding the elections”; P161, “Map of the Vance-Owen Plan”, 2 January 1993; P162, “Platform of the Republika Srpska SRS”, 20 March 1993 and P163, “Interview with Vojislav Šešelj”, 31 May 1991

<sup>4</sup> The documents marked for identification bear the following numbers: MFI P140, “Proclamation of the central administration of the Serbian Chetnik Movement (‘SČP’)”, dated 18 February 1991; MFI P141, “Copy of the platform of the Ravna Gora movement”, published in 1996; MFI P142, “Map of ‘Chetnik’ Serbia”; MFI P149, “Excerpt from a book by Đuro Stanisavljević”; MFI P150, “Interview with Vojislav Šešelj”, dated 8 August 1990; MFI P153, “Proclamation of Vojislav Šešelj”, dated 18 February 1991; MFI P164, “Report”; MFI D10, “Reprint of several editions of Brojeva Lista Velika Srbija from 1888 to 1903”; MFI D11, “Editions of Velika Srbija from 1916”; MFI D12, “Reprint of editions of Velika Srbija from 1914 to 1926; MFI D13, “Book by Milan Jevtić”; MFI D14, “Map”; and MFI D15, “Cover page of book by Drago Jepić”.

November 2007 on the presentation of evidence<sup>5</sup> (“Guidelines”). Before examining the documents that were disputed or subject to debate, the Chamber immediately admits the following pieces of evidence into the record, because they were put to the Expert, bear sufficient indicia of relevance, probative value and reliability and, finally, because there was no challenge to their admission:

- (i) MFI P140, “Proclamation of the central administration of the Serbian Chetnik Movement (“SČP”)", dated 18 February 1991;<sup>6</sup>
- (ii) MFI P150, “Interview with Vojislav Šešelj”, dated 8 August 1990;<sup>7</sup>
- (iii) MFI P153, “Proclamation of Vojislav Šešelj”, dated 18 February 1991;<sup>8</sup>
- (iv) MFI D14, “Map”, dated 16 August 1995;<sup>9</sup> and
- (v) MFI D15, “Cover page of the book by Drago Jepić”.<sup>10</sup>

#### **A. Exhibits Presented by the Prosecution**

##### **1. Exhibit MFI P164, “Report”**

###### **(a) Admission**

5. Upon completion of the cross-examination, the Accused indicated his objection to the admission of the Report, marked for identification as MFI P164, because it was “incompetent, unqualified, not objective, and very biased”.<sup>11</sup> In this regard, the Chamber notes once again the fundamental distinction that exists between the admissibility of documentary evidence and the final determination of its probative value and weight, which will be made by the Chamber in light of the case as a whole.<sup>12</sup>

6. Rule 94 *bis* of the Rules, which governs the evidence of expert witnesses, does not add any supplementary conditions to the admissibility conditions already set out in Rule 89 of the Rules.<sup>13</sup>

<sup>5</sup> Order Setting Out the Guidelines for the Presentation of Evidence and the Conduct of the Proceedings During the Trial, 15 November 2007 (“Guidelines”).

<sup>6</sup> Hearing of 29 January 2008, Transcript in French (“T(F)”) 2866-2870.

<sup>7</sup> Hearing of 30 January 2008, T(F) 2978-2979.

<sup>8</sup> *Id.*, T(F). 3014-3020.

<sup>9</sup> Hearing of 5 February 2008, T(F). 3178-3185.

<sup>10</sup> *Ibid.*

<sup>11</sup> Hearing of 6 February 2008, T(F). 3284.

<sup>12</sup> See Guidelines, Annex, para. 2.

<sup>13</sup> *The 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, para. 27 ; *The Prosecutor v. Radoslav Brdanin*, Case No. IT-99-

Accordingly, the admission of such evidence must also be conditioned by the criteria of Rule 89 of the Rules.

7. The Chamber recalls that expert witnesses may not make determinations on the ultimate issues that the Trial Chamber will be called upon to settle and are therefore not authorised to offer their opinion on subjects such as the criminal responsibility of an Accused.<sup>14</sup> Accordingly, all parts of an expert report that the Chamber considers fall outside of the expert's field of expertise — even more so when the expert's opinions cover ultimate issues that the Chamber will be called upon to settle — shall not be taken into account.<sup>15</sup>

8. Moreover, the Chamber considers that the objections raised by the Accused<sup>16</sup> do not go to the admissibility of the Report but rather to its assessment and the weight to attribute to its content, which the Chamber will determine at the end of the trial, taking into account all of the evidence adduced. In this context, the admission of the Report does not necessarily mean that the Chamber accepts its findings. Moreover, the Accused will be able to call his own expert whose findings could run contrary to those of the Report.<sup>17</sup>

9. Because Yves Tomić was qualified as an expert and because the Report bears sufficient criteria of reliability, in particular with respect to the sources used in its drafting,<sup>18</sup> the Chamber admits the Report.

(b) Discussion on which version of the Report to admit

10. On 23 May 2006, the Prosecution filed the English version of the Report; Trial Chamber I, then in charge of the case, was English-speaking.<sup>19</sup> On 31 May 2006, the Accused received the Report in a language he understands.<sup>20</sup> On 26 July 2007, the Accused's Response was filed in

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36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003 ("*Brdanin* Decision"), p. 5.

<sup>14</sup> *Martić* Decision, p. 5, citing also *The Prosecutor v. Enver Hadžihasanović et al.*, Case No. IT-01-47-T, Decision on Report of Prosecution Expert Klaus Reinhardt, 11 February 2004, p. 4 and the Trial Chamber in *The Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, at pages 13305 to 13307 of the English transcript of the hearing of 28 January 2000.

<sup>15</sup> For instance, the paragraph beginning with "on 6 May" on pages 89 and 90 of the Report, the paragraph beginning with "in the presidential election" on pages 94 and 95 of the report, and the last paragraph of the conclusion of the report at pages 99 and 100.

<sup>16</sup> See para. 5 *supra*.

<sup>17</sup> See *Brdanin* Decision, p. 6; *Milutinović* Decision, para. 19.

<sup>18</sup> *The Prosecutor v. Milan Martić*, Case No. IT-95-11-T, 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 Sekulić, and on Prosecution Motion to Reconsider Order of 7 November 2006 ("*Martić* Decision"), p. 4, citing *The 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. Radinović, 21 February 2003, para. 9.

<sup>19</sup> "Prosecution Submission of the Expert Report of Yves Tomić", presented on 1 February 2006 and filed on 23 May 2006.

<sup>20</sup> *Procès-verbal* of reception of documents, signed by the Accused on 31 May 2006.

accordance with the Decision on the Accused's Third Motion to Admit Submissions 210, 211 and 212, rendered by the pre-trial Judge then in charge of the case.<sup>21</sup> On 7 November 2007, the Prosecution filed notice of the filing of the original French version of the Report ("Notice of Filing in French").<sup>22</sup> On 9 November 2007, the Accused received in a language he understands the Notice of Filing in French, as well as a copy of the Report identical to the one disclosed on 31 May 2006.<sup>23</sup> On 20 November 2007, the Accused presented Submission 341, in which he responded, *inter alia*, to the Notice of Filing in French.<sup>24</sup> On 14 January 2008, the Prosecution filed a *Corrigendum* to the original French version of the Report.<sup>25</sup>

11. On 22 January 2008, a few days before the Expert's appearance, the Prosecution filed a revised version of the Report in English and in BCS.<sup>26</sup> Because the Accused responded and prepared his cross-examination on the basis of the initial version of the Report in BCS and because the Chamber considers that it need not examine which changes were made to the English and BCS versions of the Report a few days prior to the arrival of the Expert and a year and a half after these two versions were filed, the Chamber will admit the following:

- (i) the original version of the Report in French revised by the *Corrigendum* of 14 January 2008 ;
- (ii) the BCS version of the Report as disclosed to the Accused on 31 May 2006 and 9 November 2007;
- (iii) the English version of the Report as filed on 23 May 2006.

2. Exhibits MFI P149, "Excerpt from a book by Đuro Stanisavljević"; MFI P141, "Copy of the platform of the Ravna Gora movement", published in 1996; and MFI P142, "Map of 'Chetnik' Serbia"

12. Because the exhibit marked for identification as MFI P149 has not yet been translated into one of the two working languages of the Tribunal, the Chamber stays its ruling pending receipt of this translation.

13. The Accused objected to the admission of Exhibit MFI P141 on the ground that it is only an excerpt from a compendium of documents published in a magazine in 1996 and that the original

<sup>21</sup> Decision on the Accused's Third Motion to Admit Submissions 210, 211 and 212 (Number 268), 26 July 2007, p. 2.

<sup>22</sup> Prosecution's Notice of Filing of the Original Expert Report of Yves Tomić in French, 7 November 2007.

<sup>23</sup> *Procès-verbal* of reception of documents, signed by the Accused on 9 November 2007.

<sup>24</sup> Submission 341, presented on 20 November 2007 and filed on 27 November 2007, para. 3.

<sup>25</sup> Prosecution's Notice of Filing of the Original Expert Report of Yves Tomić in French (*Corrigendum*), 14 January 2008.

<sup>26</sup> Prosecution's Notice of Filing of the Revised Translation of Expert Report of Yves Tomić, 22 January 2008.

version of the “Ravna Gora” movement platform was not produced.<sup>27</sup> While the Chamber can only note that the original platform of the “Ravna Gora” movement was not produced in court, it considers nonetheless that Exhibit MFI P141, which is a copy of the “Ravna Gora” movement platform, bears sufficient indicia of authenticity. The Chamber admits this exhibit, and shall be responsible for assessing its probative value, in light of the case as a whole, in the absence of an original copy of the “Ravna Gora” movement platform.

14. The Accused objected to the admission of the exhibit marked for identification as MFI P142 on the ground that it is a map whose author is unknown.<sup>28</sup> Nonetheless, it is clear from the proceedings that the witness was in a position to identify the pamphlet the map comes from as well as the author of the accompanying text.<sup>29</sup> As the Chamber is *prima facie* satisfied that this document is authentic, it admits the exhibit into evidence and assigns it number P142.

### **B. Exhibits Presented by the Accused**

15. The exhibit marked for identification as MFI D13 is a voluminous book written in BCS. The Accused requested that it be admitted in its entirety in order to prove the “expert’s ignorance”. The Chamber recalls that according to the Guidelines, the admission of voluminous documents may not be sought unless there are exceptional circumstances.<sup>30</sup> Moreover, an English translation has been tendered only for pages 13, 161, 173, 287 and 375 of this book, which were discussed in court, and the Accused states that these pages capture its essence.<sup>31</sup> Accordingly, the Chamber will admit only these five pages. As the Expert confirmed that he did not consult this book, the remainder of Exhibit MFI D13 need not be admitted.

16. During the hearing, the Prosecution requested that three voluminous documents be marked for identification:<sup>32</sup> Exhibits MFI D10,<sup>33</sup> MFI D11<sup>34</sup> and MFI D12.<sup>35</sup> The Accused specified that he was requesting the admission of these three documents only for their “visual impression” and that “none of the texts in these books has to be translated.”<sup>36</sup> The Chamber considers that sufficient

<sup>27</sup> Hearing of 29 January 2008, T(F). 2879-2884.

<sup>28</sup> *Id.*, T(F). 2892, 2895, 2900.

<sup>29</sup> *Id.*, T(F). 2897-2904.

<sup>30</sup> Guidelines, para. 9 according to which: “Except under exceptional circumstances, the parties may not request the admission of very long documents such as books when only several passages of those documents are relevant to the testimony of a witness through whom the document is presented. On the contrary, the parties are requested to specify the passages whose admission is sought.”

<sup>31</sup> Hearing of 5 February 2008, T(F). 3174.

<sup>32</sup> *Id.*, T(F). 3156.

<sup>33</sup> “Velika Srbija reprint Brojeva Lista Velika Srbija, from 1888 to 1903”.

<sup>34</sup> “All Volumes of Velika Srbija from 1916, Solun Edition”.

<sup>35</sup> “Reprint of All Saved Volumes of Velika Srbija from 1914 to 1926”.

<sup>36</sup> Hearing of 5 February 2008, T(F). 3157.

reference has been made in the trial transcript to the size of these three volumes which were marked for identification and that there is no need to admit them for their “visual” impression.

#### IV. DISPOSITION

17. For these reasons, in accordance with Rule 89 of the Rules, **PARTIALLY GRANTS** the Motions of the parties, **ORDERS** that the documentary evidence be admitted or rejected as indicated in the table annexed to this decision and **STAYS ITS RULING** on the admission of Exhibit MFI P149 pending receipt of its translation into one of the two working languages of the Tribunal.

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

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Jean-Claude Antonetti  
Presiding Judge

Dated this third day of April 2008  
At The Hague  
The Netherlands

[Seal of the Tribunal]

#### Annex

Exhibit Number	Party proposing admission of the Exhibit	Admitted/Not admitted/Marked for identification (MFI)
P140	Prosecution	Admitted
P141	Prosecution	Admitted
P142	Prosecution	Admitted
P149	Prosecution	Marked for identification until the translation is provided in one of the two working languages of the Tribunal.
P150	Prosecution	Admitted
P153	Prosecution	Admitted
P164	Prosecution	Admitted (for further details regarding the various versions to

		admit, <i>see</i> para. 12 <i>supra</i> .)
D10	Accused	Not admitted
D11	Accused	Not admitted
D12	Accused	Not admitted
D13	Accused	Admitted only as regards pages 13, 161, 173, 287 and 375 of the original in BCS of which the Chamber received a translation in English.
D14	Accused	Admitted
D15	Accused	Admitted