



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: 15 October 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: 15 October 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION ON THE EXPERT STATUS OF EWA TABEAU

The Office of the Prosecutor

Mr Daryl Mundis
Ms Christine Dahl

The Accused

Mr Vojislav Šešelj

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");

SEIZED of a submission filed on 13 July 2006 by the Office of the Prosecutor (respectively "Submission of 13 July 2006" and "Prosecution")¹ disclosing pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence of the Tribunal ("Rules") the report of demographer Ewa Tabeau dated 29 June 2006 ("Hrtkovci Report")² with exhibits related to the Report and requesting pursuant to Rule 92 *ter* of the Rules the admission of Ewa Tabeau's transcript of evidence in the case of *The Prosecutor v. Slobodan Milošević* ("Milošević Case") and related exhibits;³

NOTING the receipt of the Hrtkovci Report by Vojislav Šešelj ("Accused") on 18 October 2007 in a language he understands;⁴

NOTING the decision rendered on 7 January 2008 in which the Chamber stayed its ruling on the Prosecution motion to admit transcripts of Ewa Tabeau's evidence in the *Milošević* case,⁵ until the Chamber had ruled on her status as an expert;⁶

NOTING the decision rendered on 8 April 2008 in which the Chamber stayed its ruling on the Accused's motion for the Prosecution to disclose to him documents related to the demography of Bosnia and Herzegovina ("Bosnia and Herzegovina Documents"),⁷ until the Chamber ruled on the admission of Ewa Tabeau's transcripts

¹ Prosecution's Submission of the Expert Report of Ewa Tabeau pursuant to Rule 94 *bis* and Motion for the Admission of Transcripts pursuant to Rule 92 *bis* (D), 13 July 2006 ("Submission of 13 July 2006").

² 65 *ter* Exhibit 2859, The Out-Migration of Croats and Other Non-Serbs from the Village of Hrtkovci in Vojvodina in 1992, 29 June 2006.

³ See the Prosecution's confidential and *ex parte* consolidated submission filed on 22 October 2007 pursuant to Rules 92 *ter* and 92 *quater* of the Rules: Prosecution's Clarification of the Pending Motions for Admission of Statements pursuant to Rules 89 (F), 92 *bis*, 92 *ter* and 92 *quater*. This submission was originally based on Rule 92 *bis* (D) (see the Submission of 13 July 2006, paras. 1 and 4).

⁴ Procès-verbal of reception of documents, filed on 1 November 2007, signed by the Accused on 18 October 2007.

⁵ Ewa Tabeau testified in the *Milošević* case on 7 October 2003.

⁶ Decision on the Prosecution's Consolidated Motion Pursuant to Rules 89 (F), 92 *bis*, 92 *ter* and 92 *quater* of the Rules of Procedure and Evidence, filed confidentially on 7 January 2008.

⁷ The Accused requested the disclosure of: (1) the criteria used for the 1991 census and the statistics corresponding to each criterion, (2) the criteria used for the OSCE electoral registers in 1997 and 1998 and the statistics corresponding to each criteria, (3) the list of persons who were matched in 1991 and the 1997 and 1998 electoral registers with the relevant information, (4) persons working abroad

of evidence in the *Milošević* case, because the Bosnia and Herzegovina Documents are only relevant in this regard;⁸

NOTING this same decision in which the Chamber also declared moot the request to disclose the list of 116 persons who allegedly left Hrtkovci after the events between May and August 1992 in this locality and received the status of refugees in Croatia ("List of Persons"), provided that the Prosecution did indeed disclose this List of Persons to the Accused;⁹

NOTING the receipt of the List of Persons by the Accused on 4 September 2008 in a language he understands;¹⁰

CONSIDERING that in the submissions filed on 16 April 2007, the Accused indicated that he objected to the admission of Ewa Tabeau's transcripts of evidence in the *Milošević* case, that he wanted to cross-examine her and that he challenged the relevance of the entirety of the Hrtkovci Report as well as the expert status of Ewa Tabeau;¹¹

CONSIDERING that it is up to the Chamber to determine whether, in view of the elements presented by the Parties, the person proposed as an expert witness may be recognized as such;¹²

CONSIDERING in this regard that the term "expert" has been defined in the jurisprudence as "a person who, by virtue of some specialised knowledge, skill or training, can assist the trier of fact to understand or determine an issue in dispute".¹³

accompanied by their families according to the 1991 census broken down by municipality in Bosnia and Herzegovina.

⁸ Decision on the Accused's Submission No. 373 Requesting Additional Information on Ewa Tabeau's Report, 8 April 2008, p. 3 ("Decision of 8 April 2008").

⁹ Decision of 8 April 2008, p. 3.

¹⁰ Receipt no. 434, signed by the Accused on 4 September 2008, in which the Prosecution indicates that the list of persons which was disclosed on 5 October 2007 (*see* Receipt No. 79) was corrected and then re-disclosed on 4 September 2008.

¹¹ Submission Number 263 – Professor Vojislav Šešelj's Official Notice Concerning the Expert Report of Ewa Tabeau Submitted by the Prosecution Pursuant to Rule 94 *bis* and Response to Motion for Admission of Transcripts Pursuant to Rule 92 *bis* (D), p. 3, filed on 16 April 2007.

¹² *See* in this regard, *The Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 20.

CONSIDERING that the expert status of a witness called by one of the Parties, after due consideration of the evidence presented, is at the discretion of the Chamber;¹⁴

CONSIDERING that the Chamber may, within its discretionary powers, have recourse to curriculum vitae, articles, publications, professional experience or other information relating to the witness for the subject on which expertise is required;¹⁵

CONSIDERING that the Witness's field of expertise, which is not specified by the Prosecution in the Submission of 13 July 2006, ensues from the subject of the Hrtkovci Report that relates to demographic changes in the non-Serbian population of Vojvodina and in particular that of Hrtkovci;

CONSIDERING that Ewa Tabeau has a PhD in mathematical demography and an MSc degree in econometrics and statistics, that she taught demography from 1983 to 1991 at the Warsaw School of Economics, that she worked for nine years at the National Demographic Institute of the Netherlands, that she currently holds a position as demographer in the Demography Unit of the Office of the Prosecutor, that she has testified before the Tribunal several times as an expert and that she is the author of numerous expert reports, articles and essays dealing with demography;¹⁶

CONSIDERING that in view of Ewa Tabeau's training, professional experience, numerous publications as well as her expert status recognized before this Tribunal on demographic matters, she is familiar with demographic questions and she is thus entitled to testify as an expert within the meaning of Rule 94 *bis* of the Rules on the subjects raised in her report;

CONSIDERING nevertheless that in light of the objections raised by the Accused, Ewa Tabeau should appear *viva voce* before the Chamber in order to reply to

¹³ Decision on Anthony Oberschall's Status as an Expert, 30 November 2007 ("*Oberschall Decision*"), p. 2. This decision refers to *The 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 ("*Strugar Decision*").

¹⁴ *Oberschall Decision*, p. 2, referring to *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Appeal Judgement, 7 July 2006, para. 31.

¹⁵ *Oberschall Decision*, p. 2, referring to *The Prosecutor v. Dragomir Milošević*, Decision on Admission of Expert Report of Robert Donia, Case No. IT-98-29-T, 15 February 2007, para. 7, as well as the *Strugar Decision*, p. 4; cf. also Decision on the Qualifications of Expert Yves Tomić, 15 January 2008, para. 12.

¹⁶ Submission of 13 July 2006, Annex A, to which Ewa Tabeau's curriculum vitae is attached.

questions from the Prosecution, the Accused and possibly the Chamber and that during her cross-examination, the Accused will be able to challenge the probative value, relevance and reliability of the conclusions in the Hrtkovci Report;

CONSIDERING that the Chamber will rule on the admission of the Hrtkovci Report in the light of Ewa Tabeau's testimony in the present case;

CONSIDERING that the Prosecution has not shown the relevance for the present case of the transcripts of Ewa Tabeau's evidence in the *Milošević* case;

FOR THE FOREGOING REASONS

PURSUANT TO Rule 92 *ter* and 94 *bis* of the Rules

DENIES

- (i) the motion to admit the transcript evidence of Ewa Tabeau in the *Milošević* case and related exhibits; and
- (ii) consequently the Accused's request concerning the disclosure of the Bosnia and Herzegovina Documents.

ORDERS:

- (i) Ewa Tabeau to appear before the Chamber as an expert to be questioned by the Accused and, as appropriate, by the Prosecution and the Chamber;
- (ii) the examination-in-chief shall not exceed thirty minutes;
- (iii) the cross-examination shall not exceed two hours; and
- (iv) in case of need, the supplementary questions put, as appropriate, by the Prosecution shall not exceed one hour.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this fifteenth day of October 2008
At The Hague
The Netherlands

[Seal of the Tribunal]