



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: 13 November 2008

Original: English

IN TRIAL CHAMBER III

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

Registrar: Mr. Hans Holthuis

Decision of: 13 November 2008

PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON THE EXPERT STATUS OF MS. VIŠNJA BILIĆ AND THE
PROSECUTION'S MOTION FOR LEAVE TO AMEND THE RULE 65TER
EXHIBIT LIST**

Office of the Prosecutor

Mr. Daryl Mundis
Ms. Christine Dahl

The Accused

Mr. Vojislav Šešelj

I. INTRODUCTION

1. TRIAL CHAMBER III (“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 (“Tribunal”) is seized of the Prosecution filing dated 3 November 2008 (“Motion”),¹ whereby the Prosecution submits Višnja Bilić’s report and requests that it be added, along with its accompanying documents, to the Prosecution’s Rule 65*ter* exhibit list (“Exhibit List”).²

2. The Accused responded orally to the Motion during the hearing of 11 November 2008 and indicated his opposition to the Motion. The Accused indicated that he contested Višnja Bilić’s qualifications and report and objected to the Prosecution’s requested additions to the Exhibit List. Further, he stated that Višnja Bilić would, in essence, simply be submitting Ivan Grujić’s expert report in his stead, which he was opposed to.³

II. BACKGROUND

3. On 7 April 2008, the Prosecution sought leave from the Trial Chamber to replace Ivan Grujić from its Rule 65*ter* witness list (“Witness List”)⁴ as a designated expert with Višnja Bilić regarding the issue of exhumation and identification processes in Croatia.⁵ In an *addendum* to its 7 April 2008 Motion, the Prosecution sought to add to its Exhibit List three English translations of Serbian documents, which could be commented on by Višnja Bilić.⁶ The Prosecution further requested that Ivan Grujić also be replaced by Anna-Maria Radić as a designated expert as concerns the issue of displaced persons and refugees, given that such expertise was outside the scope of Višnja Bilić’s qualifications.⁷

¹ Prosecution Submission of the Report of Ms. Višnja Bilić Pursuant to Rule 94*bis* and Motion for Leave to Amend the Rule 65*ter* Exhibit List, with Annexes, 3 November 2008 (“Motion”).

² Prosecution Notice of Filing Exhibit List Pursuant to Rule 65*ter*, with Annex (confidential and *ex parte*), 25 June 2007.

³ Hearing of 11 November 2008, T. 11554-11555; *see also* “Professor Vojislav Šešelj’s Reply to the Prosecution’s Motion for Leave to Amend its Witness List and Exhibit List”, submitted 23 April 2008 and filed 29 April 2008, pp. 3-6.

⁴ Prosecution’s Submission of Revised Final Witness List, with Annex A (confidential), 29 March 2007.

⁵ *See* “Requête du parquet aux fins de modification de la liste des témoins et de la liste des pièces à conviction”, with Annexes (public and confidential), 7 April 2008 (“7 April 2008 Motion”), para. 29.

⁶ *See* “Addendum à la requête du parquet aux fins de modification de la liste des témoins et de la liste des pièces à conviction”, with Annexes (public), 15 May 2008 (“Addendum to 7 April 2008 Motion”), para. 8. These three documents, filed as Annex B (public) to the Addendum to 7 April 2008 Motion, are: (1) a methodology and activity report from the office for missing persons and detainees; (2) updated information from the official records of the administration for detained and missing persons regarding the names of the victims at the Ovčara farm; and (3) a list of identified persons whose remains have been exhumed from the Ovčara mass grave.

⁷ Addendum to 7 April 2008 Motion, para. 8.

4. On 16 June 2008, the Trial Chamber granted the Prosecution's request to replace Ivan Grujić with Višnja Bilić and Anna-Maria Radić on the Witness List — regarding the exhumation and identification processes in Croatia and the issue of displaced persons and refugees, respectively.⁸ The Trial Chamber found that the evidence to be presented by Višnja Bilić was *prima facie* relevant to the charges against the Accused and that her addition to the Witness List would not unfairly prejudice the Accused. However, the Trial Chamber deferred its determination as to whether Višnja Bilić qualified as an expert witness pending reception of her report.⁹ Moreover, the Trial Chamber granted the Prosecution's request to add the three English translations of Serbian documents to the Exhibit List.¹⁰

5. Višnja Bilić is currently scheduled to testify in the present case as of 18 November 2008.

III. DISCUSSION

A. Višnja Bilić's expert status

6. Rule 94*bis* of the Rules reads as follows:

- (A) The full statement and/or report 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.
- (B) Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:
 - (i) it accepts the expert witness statement and/or report; 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 statement and/or report and, if so, which parts.
- (C) If the opposing party accepts the statement and/or report of the expert witness, the statement and/or report may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

7. The term "expert" has been defined in the case-law 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".¹¹ The attribution of the expert status of a witness called by one of the Parties, in view of the information provided by that Party, is a matter within the discretionary power of the

⁸ Decision on Prosecution's Motion for Leave to Amend its Witness List and Exhibit List, 16 June 2008, para. 19.

⁹ Decision on Prosecution's Motion for Leave to Amend its Witness List and Exhibit List, 16 June 2008, para. 22.

¹⁰ Decision on Prosecution's Motion for Leave to Amend its Witness List and Exhibit List, 16 June 2008, para. 32.

¹¹ Decision on Anthony Obershall's Status as an Expert, 30 November 2007 ("Obershall Decision"), p. 2 referring to *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.

Trial Chamber.¹² The Trial Chamber may have recourse to *curriculum vitae*, articles, publications, professional experience or other information related to the witness for whom the expert qualification is requested.¹³

8. The Trial Chamber recalls that the Prosecution designates Višnja Bilić as an expert on the exhumation and identification processes in Croatia, which is the focus of her report. The Trial Chamber notes that Višnja Bilić is currently employed at the Croatian ministry of Families, Veterans Affairs and Intergenerational Solidarity in the Department of Detained and Missing Persons. She is also currently Head of the Department for Interdepartmental Cooperation and Records as well as Secretary of the Commission of the Government of the Republic of Croatia for Detained and Missing Persons. In fact, she has, stretching back to 1993, worked in various predecessors to the Department of Detained and Missing Persons.¹⁴ The Trial Chamber finds that given her extensive professional experience in this field, Višnja Bilić is entitled to testify as an expert within the meaning of Rule 94bis of the Rules on the exhumation and identification processes in Croatia.

9. The Trial Chamber considers that, in light of the objections raised by the Accused during the hearing of 11 November 2008,¹⁵ Višnja Bilić should appear before the Tribunal in order to answer questions from the Prosecution, the Accused and from the Trial Chamber, should it so desire. During cross-examination, the Accused will have the opportunity to challenge the probative value, relevance and reliability of the conclusions set out in Višnja Bilić's report.

10. The Prosecution will have 30 minutes for Višnja Bilić's direct examination. The Trial Chamber will assess the relevance and probative value of Višnja Bilić's report and rule on its admission in light of her testimony before the Tribunal.

B. Requests for additions to the Exhibit List

11. The Prosecution requests the addition to the Exhibit List of Višnja Bilić's report¹⁶ as well as a number of accompanying documents, namely: (i) the Prosecution's letter of instruction to Višnja Bilić;¹⁷ (ii) documents used by Ivan Grujić and relied upon by Višnja Bilić for her report that were

¹² Oberschall Decision, p. 2.

¹³ *Id.*

¹⁴ 7 April 2008 Motion, para. 8 ; *see also Id.* Annex B (Višnja Bilić's *curriculum vitae*).

¹⁵ Hearing of 11 November 2008, T. 11555; *see also* "Professor Vojislav Šešelj's Reply to the Prosecution's Motion for Leave to Amend its Witness List and Exhibit List", submitted 23 April 2008 and filed 29 April 2008, pp. 3-6.

¹⁶ Attached as Annex A to the Motion.

¹⁷ Attached as Annex B to the Motion.

not on the Exhibit List;¹⁸ (iii) an annex to Višnja Bilić's report entitled "Analysis of the List of Victims Referred to in Annex IV to the Indictment";¹⁹ and (iv) documents which are on the Exhibit List but that have been updated or amended by Višnja Bilić.²⁰

12. In addition, the Prosecution notes that Višnja Bilić's report refers to missing person questionnaires related to individuals mentioned in Annex III to the Indictment but that the full range of these documents was mistakenly not included in the Exhibit List.²¹ The Prosecution adds that these documents were disclosed to the Accused on 3 November 2008 but that it does not yet have English language translations for these documents and that it will file an *addendum* to the Motion requesting their addition to the Exhibit List as soon as the translations are complete, presumably prior to Višnja Bilić's testimony.²²

13. A Trial Chamber may grant a motion seeking leave to amend a Rule 65*ter* exhibit list if it is satisfied that it is in the interests of justice to do so.²³ In view of the rights of the Accused to a fair and expeditious trial, and to adequate time and facilities for the preparation of his defence, the Trial Chamber must ensure that the Accused will not be prejudiced as a result of the addition of the exhibit.²⁴

14. The Trial Chamber recalls that Ivan Grujić's report was disclosed to the Accused in July 2006²⁵ and that it is very similar to that of Višnja Bilić, at least as concerns the issue of exhumation and identification processes in Croatia, given that the two work together at the same institution, the Croatian Ministry of the Family, Veterans Affairs and Intergenerational Solidarity, and had much of the same data at their disposal. The Trial Chamber notes that the Accused himself recognised the extent of the overlap between the two reports during the hearing of 11 November 2008.²⁶ The Trial Chamber further recalls that Višnja Bilić was designated as one of the two replacement experts for

¹⁸ Included in Annex D to the Motion. These documents consist primarily of official decrees related to the administration of missing persons and templates of missing person questionnaires.

¹⁹ Included in Annex D to the Motion. This annex relates to persons who were not the subject of the *Mrkšić* case and thus were not the primary subject of Ivan Grujić's earlier report.

²⁰ Included in Annex D to the Motion. These documents, which comprise the bulk of the documents that the Prosecution seeks to add to the Exhibit List, were either updated to reflect activities through 1 July 2008 or otherwise minimally altered by Višnja Bilić.

²¹ Motion, paras 9-11; *see also Id.* Annex F (listing the gaps in the ERN ranges).

²² Motion, paras 9-11; *see also Id.* Annex G (listing the documents that the Prosecution will seek the addition of to the Exhibit List).

²³ *Prosecutor v. Stanišić and Simatović*, Case No. IT-03-69-T, Decision on Prosecution Motion for Leave to Amend its Rule 65*ter* Exhibit List, 8 May 2008, confidential, para. 5.

²⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Decision on Prosecution Motion for Leave to Add and Withdraw Witnesses from the 65*ter* Witness List, confidential, 3 October 2007, para. 10.

²⁵ *See* Prosecution's Submission of the Expert Report of Colonel Ivan Grujić Pursuant to Rule 94*bis* and Motion for the Admission of Transcripts Pursuant to Rule 92*bis*(D), with Annexes, 14 July 2006.

²⁶ Hearing of 11 November 2008, T. 11555 (stating that "as far as I was able to see thus far and look at the new expert report that was tabled, it is quite obvious that the report is wholly based on the material of [Ivan] Grujić.").

Ivan Grujić and added to the Witness List by virtue of the 18 June 2008 decision. Further, her report, along with its accompanying documents, was communicated to the Accused immediately upon receipt by the Prosecution on 8 October 2008.²⁷ The Trial Chamber notes that many of the documents for which the Prosecution seeks *65ter* numbers are already on the Exhibit List but have been minimally altered and/or updated by Višnja Bilić to reflect new information as of 1 July 2008. In light of the foregoing, the Trial Chamber considers that the addition of Višnja Bilić's report to the Exhibit List, along with its accompanying documents, would not unduly prejudice the Accused.

15. The Trial Chamber notes, however, that it will rule upon the propriety of adding to the Exhibit List the missing person questionnaires related to individuals mentioned in Annex III to the Indictment upon reception of their English translations.

IV. DISPOSITION

16. Accordingly, the Trial Chamber, pursuant to Rules 54, *65ter* and *94bis* of the Rules, **ORDERS** that:

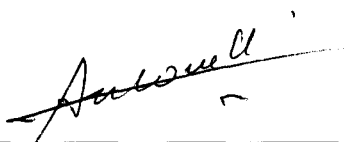
- i) Višnja Bilić shall appear before the Trial Chamber as an expert for questioning by the Parties and the Chamber;
- ii) the length of the direct examination shall be limited to 30 minutes;
- iii) the length of the cross-examination shall be limited to 30 minutes; and
- iv) the Prosecution is granted leave to add Višnja Bilić's report, along with its accompanying documents, to the Exhibit List;

and **STAYS** its decision:

- i) on the admission of the report of Višnja Bilić until after her testimony; and
- ii) on the addition to the Exhibit List of the missing person questionnaires related to individuals mentioned in Annex III to the Indictment until its reception of their English translations.

²⁷ Motion, para. 2.

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



Judge Jean-Claude Antonetti
Presiding

Dated this thirteenth day of November 2008
At The Hague
The Netherlands

[Seal of the Tribunal]