



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 November 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 November 2008

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

DECISION ON EXPERT STATUS OF DR ZORAN STANKOVIĆ

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 the submission by the Office of the Prosecutor (“Prosecution”) of the expert statement of Dr Zoran Stanković pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence (“Witness” and “Rules”, respectively), filed on 12 July 2006 (“Submission”)¹ including the annexed statement of the Witness dated 8 July and 1 October 2003 (“Witness Statement”) as well as 29 autopsy reports (“Autopsy Reports”);

NOTING the receipt of the Submission by Vojislav Šešelj (“Accused”) on 6 February 2007 in a language he understands;²

NOTING the Accused’s notice filed on 16 April 2007 (“Notice”), in which he confirms receipt of the Submission but notes that he did not receive the Witness Statement or the Autopsy Reports,³ the latter which were initially disclosed to him on 3 August 2006 on CD-ROM, which the Accused refused to accept;⁴

CONSIDERING that the Accused then made a request to the Chamber for disclosure of the Witness Statement and Autopsy Reports, after which he would file an official notice pursuant to Rule 94 *bis* of the Rules;⁵

CONSIDERING that the Submission, Witness Statement and Autopsy Reports were disclosed to the Accused on 20 July 2007⁶ but that the Accused did not file any additional submissions;

¹ Prosecution’s Submission of the Expert Statement of Professor Dr Zoran Stanković pursuant to Rule 94 *bis*, 12 July 2006.

² See *procès-verbal* of reception of documents, signed by the Accused on 9 February 2007.

³ Notice, p. 3.

⁴ See *procès-verbal* of reception dated 3 August 2006, noting the Accused’s refusal to accept the documents.

⁵ Notice, p. 4.

⁶ See *procès-verbal* of reception of documents, signed by the Accused on 20 July 2007.

CONSIDERING that in his Notice the Accused stated that he was unable to make any submissions on the merits but that he wished to dispute the Witness Statement and to cross-examine the Witness, whose expert qualifications he challenges,⁷

CONSIDERING that it is the responsibility of the Chamber to determine, in light of the information presented by the Parties, whether the person proposed as an expert witness may be recognized as such,⁸

CONSIDERING that according to the case-law, the term “expert” has been defined 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”;⁹

CONSIDERING that the qualification of a witness called by one of the Parties as an expert is subject to the discretionary power of the Chamber, in view of the information provided by that Party;¹⁰

CONSIDERING that in the exercise of its discretion, the Chamber may have recourse to *curricula vitae*, articles, publications, professional experience or other information related to the witness for whom the expert qualification is requested;¹¹

CONSIDERING that the Witness holds a medical degree from the Faculty in Niš and that, after completing his military service in the then Yugoslav Army (JNA), he joined the Belgrade Military Medical Academy in 1987 and was promoted in 1992 to the rank of Major within that Academy and became its director in 2002;¹²

⁷ “Professor Vojislav Šešelj’s Official Notice concerning the Expert Report of Professor Dr Zoran Stanković submitted by the Prosecution pursuant to Rule 94 *bis*”, dated 29 March 2007 and filed on 16 April 2007 (“Notice”).

⁸ *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.

⁹ 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*”).

¹⁰ *Oberschall Decision*, p. 2 referring to *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Appeal Judgement, 7 July 2006, para. 31.

¹¹ *Oberschall Decision*, p. 2 referring to *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29-T, Decision on Admission of Expert Report of Robert Donia, 15 February 2007, para. 7, and to the *Strugar Decision*, p. 4; *cf. also* Decision on the Qualifications of Expert Yves Tomić, 15 January 2008, para. 12.

¹² Expert Witness Statement, paras. 5-6.

CONSIDERING that the Witness, on his own initiative and in the context of his responsibilities as a physician, began to examine bodies as from 1991 when the war broke out, and recorded the information gathered in the context of these duties as a forensic expert, which he continued to perform in 1992 at the time of events referred to in the Indictment;¹³

CONSIDERING that in view of his training and professional experience as a forensic expert at the Belgrade Medical Military Academy, the Witness is familiar with the performance of autopsies and his Autopsy Reports, which were prepared at the time of the events referred to in Indictment, will assist the Chamber in understanding or determining these matters,

CONSIDERING that as a result, the Witness is authorized to testify as an expert within the meaning of Rule 94 *bis* of the Rules on the subject matter raised in the Witness Statement and Autopsy Reports,

CONSIDERING nonetheless that, in light of the objections raised by the Accused, the Witness will be required to appear before the Chamber in order to answer questions from the Prosecution, the Accused and, possibly, the Chamber, and that in cross-examination the Accused will have the opportunity to challenge the probative value, relevance and reliability of the conclusions contained in the Witness Statement;

CONSIDERING that the Chamber will rule on the admission of the Witness Statement into the record in the light of the Witness's evidence in this case;

¹³ *Ibid*, paras. 8-9; 12.

FOR THESE REASONS

IN ACCORDANCE WITH Rule 94 *bis* of the Rules

ORDERS that:

- (i) Dr Zoran Stanković shall appear before the Chamber as an expert to be examined by the Parties and, where appropriate, the Chamber;
- (ii) the duration of the direct examination shall not exceed one hour; and
- (iii) the duration of the cross-examination shall not exceed one hour.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

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

[Seal of the Tribunal]