



International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed in  
the Territory of Former Yugoslavia since 1991

Case No. IT-04-81-T

Date: 13 January 2009

Original: English

**IN TRIAL CHAMBER I**

**Before:** Judge Bakone Justice Moloto, Presiding Judge  
Judge Pedro David  
Judge Michèle Picard

**Acting Registrar:** Mr. John Hocking

**Decision of:** 13 January 2009

**PROSECUTOR**

**v.**

**MOMČILO PERIŠIĆ**

***PUBLIC***

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**DECISION ON EXPERT REPORT OF JOŽEF POJE**

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**The Office of the Prosecutor**

Mr. Mark Harmon  
Mr. Daniel Saxon

**Counsel for the Accused**

Mr. Novak Lukić  
Mr. Gregor Guy-Smith

**TRIAL CHAMBER I** (“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 seised of the Defence “Notice Pursuant to Rule 94 *bis* Concerning Prosecution Experts Grujić, Kovacs, Poje, Higgs, Philips, Tabeau and Zečević”, filed on 27 November 2006 (“Motion”) and hereby renders its Decision in relation to the part of the Motion concerning the expert report of Jožef Poje.

## I. PROCEDURAL HISTORY

1. On 14 June 2006, the pre-trial Judge ordered the Prosecution “to provide the reports of any expert witnesses to be called” and set the deadline of 20 October 2006 (“Order of 14 June 2006”).<sup>1</sup> In 2006, the Prosecution provided several expert reports of Mr. Poje to the Defence and on 16 December 2008, the Prosecution filed one of these reports as the report it intends to rely on during the trial (“Report”).<sup>2</sup> On 2 February 2007, the Trial Chamber III, then seised of the case, issued its “Order on Defence Submissions Regarding Various Experts’ Reports Disclosed by the Prosecution Pursuant to Rule 94*bis*” (“Order of 2 February 2007”), in which it deferred the decision on the merits of the Parties’ submissions to the Trial Chamber that would hear the case at trial.<sup>3</sup>

## II. SUBMISSIONS

2. In its Notice, the Defence makes objections to all five reports authored by Mr. Poje which were disclosed to the Defence in 2006. Due to the fact that the Prosecution intends to rely only on one of them at trial, the Trial Chamber has only considered the Defence arguments relating to this Report.

3. The Defence objects to the admission of the Report, wishes to cross-examine Mr. Poje and “does not accept the qualifications of Jožef Poje to make all of the opinions he makes in his report”.<sup>4</sup> In support of its position, the Defence submits that although it accepts the expertise of Mr. Poje as concerns artillery, it does not accept certain opinions given by Mr. Poje in his Report as

<sup>1</sup> Status Conference, 14 June 2006, T. 50. On 5 October 2006, the Prosecution filed a “Motion to Vacate Order of 14 June 2006 Concerning Filing Time for Military Experts Reports with Confidential Annex A” (“Motion to Vacate”). The Motion to Vacate was denied on 11 October 2006. *See* Decision on Prosecution’s Motion to Vacate Order of 14 June 2006. *See also* Status Conference, 11 October 2006, T. 66.

<sup>2</sup> Submission of Expert Report by Jožef Poje with Annex A, filed publicly by the Prosecution on 18 December 2008.

<sup>3</sup> Order of 2 February 2007, para. 10. *See also* Status Conference, 18 January 2008, T. 131. On 19 February 2007, the Prosecution filed its “Response to Trial Chamber’s Order on Defence Submissions Regarding Various Experts’ Reports Disclosed by the Prosecution Pursuant to Rule 94*bis*”, wherein the Prosecution notified the Trial Chamber, then seised of the case, that it complied with the Order of 2 February 2007 in relation to the matters decided by the Trial Chamber at the pre-trial stage.

<sup>4</sup> Motion, para. 3.

they fall outside his area of expertise, e.g., issues of command and control, as well as justification for the shelling of Zagreb.<sup>5</sup>

### III. APPLICABLE LAW

4. Rule 94 *bis* of the Rules of Procedure and Evidence ("Rules") reads as follows:

**Rule 94 *bis***  
**Testimony of Expert Witnesses**

- (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.

5. The jurisprudence of the Tribunal has established a number of requirements which must be met before an expert statement or report is admissible in evidence. They include:

- i. the proposed witness is classified as an expert;
- ii. the expert statements or reports meet the minimum standard of reliability;
- iii. the expert statements or reports are relevant and of probative value; and
- iv. the content of the expert statements or reports falls within the accepted expertise of the witness.<sup>6</sup>

6. The term "expert" has been defined by the jurisprudence of the Tribunal as "a person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or

<sup>5</sup> Motion, para. 3.

<sup>6</sup> *Prosecutor v. Lukić and Lukić*, Case No. IT-98-32/1-T, Decision on Second Prosecution Motion for the Admission of Evidence Pursuant to Rule 92*bis* (Two Expert Witnesses), 23 July 2008, para. 15.

determine an issue in dispute”.<sup>7</sup> In determining whether a particular witness meets these criteria, the Trial Chamber should take into account the witness’s former and present positions and professional experience through reference to the witness’s *curriculum vitae* (“CV”) as well as the witness’ scholarly articles, other publications or any other pertinent information about the witness.<sup>8</sup>

7. The content of the statement or report must fall within the expert witness’s area of expertise.<sup>9</sup> This requirement ensures that the statements or reports of an expert witness will only be treated as expert evidence, insofar as they are based on the expert’s specialised knowledge, skills or training. Statements that fall outside the area of expertise will be treated as personal opinions of the witness and will be weighted accordingly.<sup>10</sup> Generally, an expert witness should not offer his or her opinion on the criminal liability of the accused. This is a matter that falls within the competence of the Chamber.<sup>11</sup>

8. Experts may express their opinion within the confines of their expertise on the facts established in evidence if the opinion is relevant to the case.<sup>12</sup>

#### IV. DISCUSSION

9. An analysis of Mr. Poje’s CV shows that he graduated from the Military Academy and the Command Staff Academy in Belgrade. During his professional career, he held various command posts in the artillery units of the JNA. Mr. Poje has also extensive teaching experience, lecturing at the Artillery School Centre in Zadar and, after 1991, at the Military School Centre in Slovenia. He is presently the head of the Artillery Department at the Doctrine and Development Centre with the Command for Doctrine, Development, Education and Training in Slovenia.<sup>13</sup> The Trial Chamber is therefore satisfied that Mr. Poje gained the required experience to be considered as an expert in the field of artillery.

10. The Trial Chamber notes that the Report describes several technical aspects of artillery, including classification of artillery, types of artillery firings and its targets, ammunition,

<sup>7</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p. 2 (“*Galić* Decision Experts Tabeau and Philipps”).

<sup>8</sup> *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-T, Decision on Expert Status of Reynaud Theunens, 12 February 2008, para. 28, with further references; *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-T, Decision on Defence Expert Witnesses, 21 August 2007, para. 6, with further references.

<sup>9</sup> *Prosecutor v. Milan Martić*, Case No. IT-95-11-T, Decision on Defence’s Submission of the Expert Report of Professor Smilja Avramov Pursuant to Rule 94bis, 9 November 2006, (“*Martić* Decision on Expert Avramov”) para. 12.

<sup>10</sup> *Ibid.*, para. 12.

<sup>11</sup> *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69-PT, Decision on Prosecution’s Submission of the Expert Report of Nena Tromp and Christian Nielsen pursuant to Rule 94 bis, 18 March 2008, para. 12.

<sup>12</sup> *Martić* Decision on Expert Avramov, para. 10.

<sup>13</sup> Motion, Annex A, pp 4-5.

fragmentation effect of a projectile and factors affecting the accuracy of artillery fire. In particular, the Report deals with the construction and use of the M87 Orkan self-propelled multiple rocket launcher, a weapon referred to in the indictment in relation to the alleged attack on Zagreb in May 1995.<sup>14</sup> The Trial Chamber therefore finds that the content of the Report falls within Mr. Poje's field of expertise and that it may assist the Trial Chamber in its determination of important issues in this case.

11. At the same time, the Trial Chamber notes that the Report contains opinions as to the purpose of the attack on the city of Zagreb and as to who ordered the use of a M87 Orkan rocket system.<sup>15</sup> These matters could be viewed as falling outside Mr. Poje's expertise and being reserved for the Trial Chamber's decision at the end of the case, on the basis of the totality of the evidence. Rather than discarding the Report in its entirety, the Trial Chamber will accord appropriate weight to these portions of the Report.

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<sup>14</sup> See paras 49 and 50 of the Indictment.

<sup>15</sup> Motion, Annex A, pp 60 *et seq.*

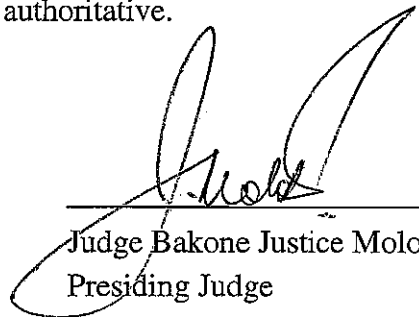
## V. DISPOSITION

12. **FOR THE FOREGOING REASONS** and **PURSUANT TO** Rules 54 and 94 *bis* of the Rules, the Trial Chamber

**GRANTS** the Motion in Part; and

**ORDERS** that Jožef Poje shall appear before the Chamber as an expert to be examined by the Parties and the Chamber.

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



Judge Bakone Justice Moloto  
Presiding Judge

Dated this thirteenth day of January 2009

At The Hague

The Netherlands

[Seal of the Tribunal]