



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: 25 February 2009

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IN TRIAL CHAMBER III

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

Acting Registrar: Mr John Hocking

Decision of: 25 February 2009

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON ADMISSION OF EVIDENCE PRESENTED DURING THE
TESTIMONY OF EWA TABEAU**

The Office of the Prosecutor

Mr Daryl Mundis
Ms Christine Dahl

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 for the admission of evidence presented during the testimony of Expert Ewa Tabeau (“Expert”), which took place on 21, 22 and 23 October 2008.

II. PROCEDURAL BACKGROUND

A. Documents Presented by the Prosecution

2. During the direct examination of the Expert, the Prosecution requested that the following documents be admitted into the record:

(1) 65 *ter* Document 2859, marked for identification as “MFI P565”¹: Report on the “Out-migration of Croats and Other Non-Serbs from the Village of Hrtkovci in Vojvodina in 1992”, prepared by the Expert and dated 29 June 2006 (“Tabeau Report”);

(2) 65 *ter* Document 2859a marked for identification as “MFI P566”²: amended Annex A to the Tabeau Report (“Annex A”);³

(3) 65 *ter* Document 2859b marked for identification as “MFI P567”⁴: Curriculum Vitae of the Expert;

(4) 65 *ter* Document 4100 marked for identification as “MFI P568”⁵: List of Croatian refugees from Vojvodina, in particular from Hrtkovci (“List of Refugees”);

(5) 65 *ter* Document 2154a marked for identification as “MFI P569”⁶: Excerpt of Marko Kljajić’s book entitled “How My People Were Dying” (“Excerpt of Kljajić’s book”);

¹ Hearing of 21 October 2008, Transcript in French (“T(F)”) 10836.

² *Ibid.*

³ List of 722 persons who left Hrtkovci in relation to the events of May-August 1992 (“Annex A”).

⁴ Hearing of 21 October 2008, T(F) 10836.

⁵ *Id.*, T(F) 10844.

(6) 65 *ter* Document 4225 marked for identification as “MFI P570”⁷: List of 100 families expelled from Hrtkovci in relation to the events of May-August 1992 (“List of 100 families”);

(7) 65 *ter* Documents 2859e marked for identification as “MFI P571”⁸: Tables 7, 8 and 9 – requests for baptism certificates by year of request, requests for baptism certificates by month of request, and requests for baptism certificates in May-June 1992 by day of request, respectively – on pages 21 and 23 of the Tabeau Report (“Tables 7, 8 and 9”). The Prosecution explained that initially it did not seek the admission of Tables 7, 8 and 9 because they are an integral part of the Tabeau Report,⁹ but then it changed its mind in order to give the Chamber a coloured version that would facilitate reading the graphs;¹⁰

(8) 65 *ter* Document 2859f marked for identification as “MFI P572”¹¹: Table 2 – Ethnic composition of Hrtkovci – on page 10 of the Report (“Table 2”).

B. Other Documents tendered by the Prosecution for admission

3. During the cross-examination of the Expert, the Accused relied on a certain number of documents that the Prosecution had disclosed to him prior to the Expert’s testimony. At the end of the cross-examination, upon a Prosecution request for admission into evidence,¹² the Chamber marked the documents for identification as follows:

(2) 65 *ter* Document 2757 marked for identification as “MFI P575”¹³: Report concerning the change in the number of Hungarians in Vojvodina from 1991 to 2002, from the provincial secretariat for national minorities (“Report on the Hungarian Minority”);

⁶ *Id.*, T(F) 10846.

⁷ *Id.*, T(F) 10859.

⁸ *Id.*, T(F) 10874, 10883.

⁹ *Id.*, T(F) 10873-10874.

¹⁰ *Id.*, T(F) 10874.

¹¹ *Id.*, T(F) 10883.

¹² Hearing of 23 October 2008, T(F) 11064.

¹³ *Id.*, T(F) 11066-11067.

(3) 65 *ter* Document 2754 marked for identification as “MFI P576”¹⁴: Report concerning the change in the number of Slovaks in Vojvodina from 1991 to 2002, from the provincial secretariat for national minorities (“Report on the Slovak Minority”);

(4) 65 *ter* Document 2753 marked for identification as “MFI P577”¹⁵: Report concerning the change in the number of Romanians in Vojvodina from 1991 to 2002, from the provincial secretariat for national minorities (“Report on the Romanian Minority”);

(5) 65 *ter* Document 2755 marked for identification as “MFI P578”¹⁶: Report concerning the change in the number of Roma in Vojvodina from 1991 to 2002, from the provincial secretariat for national minorities (“Report on the Roma Minority”);

(6) 65 *ter* Document 2758 marked for identification as “MFI P579”¹⁷: Report concerning the change in the number of Ruthenians in Vojvodina from 1991 to 2002, from the provincial secretariat for national minorities (“Report on the Ruthenian Minority”);

4. With regard to 65 *ter* Document 2756 marked for identification as “MFI P574”¹⁸ – Report concerning the change in the number of Croats in Vojvodina from 1991 to 2002, from the provincial secretariat for national minorities (“Report on the Croatian Minority”) – and 65 *ter* Document 2764 marked for identification as “MFI P573”¹⁹ – Report concerning the demographic situation in Vojvodina in 2002, from the provincial secretariat for national minorities (“Vojvodina Report”) – the Prosecution requested their admission into evidence on the ground that the Accused used them during his cross-examination, a claim the Accused disputed.²⁰ The Prosecution also requested that they be admitted into evidence so that the Chamber would have a full picture of the issue of the minorities concerned by the Tableau

¹⁴ *Id.*, T(F) 11067.

¹⁵ *Id.*, T(F) 11067.

¹⁶ *Ibid.*

¹⁷ *Id.*, T(F) 11067.

¹⁸ *Id.*, T(F) 11066.

¹⁹ *Id.*, T(F) 11064-11066.

²⁰ *Ibid.*

Report.²¹ With regard to the Vojvodina Report, the Prosecution further noted that the Expert had read certain passages from it during the cross-examination, in response to certain questions raised by the Chamber and the Accused.²²

III. APPLICABLE LAW

5. The Chamber has examined the documents tendered for admission in the light of Rule 89 (C) of the Rules of Procedure and Evidence ("Rules") and of the procedure provided for in the Order of 15 November 2007 setting out the guidelines for the presentation of evidence and the conduct of the parties during the trial.

6. The Chamber recalls that at this stage of the proceedings it need not make a *final* assessment of the relevance, reliability or probative value of the evidence. That exercise will be carried out only at the end of the trial in the light of all the evidence, both inculpatory and exculpatory, that will have been tendered into the record.²³

IV. DISCUSSION

A. Admission of Evidence Presented by the Prosecution

1. Tabeau Report (MFI P565)

7. During the cross-examination, the Accused raised a certain number of objections against the admission of the Tabeau Report.

8. The Accused argued in particular that the Expert was biased because she was employed by the Prosecution,²⁴ and that she relied on a list of refugees compiled by the Croatian authorities to prepare her report.²⁵ According to the Accused, the Expert manipulated the figures²⁶ and had no evidence at her disposal establishing that there were Croatian refugees originating from Hrtkovci or Vojvodina.²⁷

²¹ *Id.*, T(F) 11066.

²² *Id.*, T(F) 11064-11065.

²³ See for example, Decision Regarding the Admission of Evidence Presented During the Testimony of Anthony Oberschall, 24 January 2008, para. 7; Decision on Admission of Evidence Presented During the Testimony of Goran Stoparić, 7 March 2008, para. 7 referring to *The Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74-T, Decision to Admit Documentary Evidence Presented by the Prosecution, confidential, 5 October 2007, p. 7.

²⁴ Hearing of 21 October 2008, T(F) 10905-10906.

²⁵ *Id.*, T(F) 10898.

²⁶ Hearing of 22 October 2008, T(F) 10931.

²⁷ *Id.*, T(F) 10892-10898.

9. The Chamber notes nonetheless that in her testimony the Expert insisted on the fact that she did not study the causes of the demographic changes that she highlighted,²⁸ and that the departures mentioned in the Tabeau Report are also related to the overall context of the conflict in the former Yugoslavia.²⁹

10. The Accused was also critical of the few sources used by the Expert to prepare the Tabeau Report, and argued that they were unreliable and secondary.³⁰ In this connection, the Expert indicated that one of the sources– the parish registers –would have been sufficient on its own, because it is an excellent source of data for the study of demographic changes which has been used continually in the history of demographics.³¹

11. As a result, the Chamber considers that the Tabeau Report bears sufficient indicia of relevance and probative value and therefore may be admitted into evidence.

2. Annex A (MFI P566)

12. The Chamber notes that, during the request for the admission into evidence of Annex A, the Accused requested that the Expert provide clarification on the authors of this document and the sources used to prepare it.³²

13. In response, the Expert indicated that she drafted Annex A herself, in collaboration with two other persons from the demographics unit of the Tribunal Office of the Prosecutor, and that this is a compilation of information gathered from various sources: Croatian authorities, the Catholic Church and Marko Kljajić's book.³³ After these clarifications were given, the Accused did not dispute the authenticity of the document.

14. At this stage, the Chamber considers that Annex A bears sufficient indicia of reliability and probative value and therefore may be admitted into evidence.

3. Annex B (MFI P567)

²⁸ *Id.*, T(F) 10831-10832. See also hearing of 22 October 2008, T(F) 10938-10939.

²⁹ Hearing of 21 October 2008, T(F) 10831.

³⁰ *Id.*, T(F) 10906-10907. See also hearing of 22 October 2008, T(F) 10962-10969 and 10981.

³¹ Hearing of 21 October 2008, T(F) 10907-10908.

³² Hearing of 21 October 2008, T(F) 10834.

³³ *Id.*

15. The Chamber notes that the Accused raised no objection to the admission into evidence of Annex B at the time of the request to admit it.³⁴

16. The Chamber considers that this document bears sufficient indicia of reliability and probative value and therefore may be admitted into evidence.

4. List of Refugees (MFI P568)

17. The Chamber notes that the Accused challenged the authenticity of the document during the direct examination, noting that it bore no official seal.³⁵ The Expert then specified that the document was provided by the Croatian authorities following an official request for assistance sent to them in 2005.³⁶

18. The Chamber then asked – and still lacks a sufficiently specific answer from the Expert – about the exact source of this document and the procedure followed by the authorities in question to compile this List of Refugees.³⁷

19. As a result, the Chamber considers that this document may be admitted, only on condition that the Prosecution provide the details on the source and date of this document – namely, the official request for assistance to the Croatian officials sent in 2005 and the letter in response, to which the List of Refugees was attached – as well as detailed explanations from the authorities in question regarding the methodology used to prepare this document.

5. Excerpt from Kljajić's Book (MFI P569)

20. The Chamber notes that Exhibit MFI P569 is made up of two documents: a letter from Bishop Kos dated 6 July 1992 (“Letter”) and a list of Croats from Hrtkovci (“List”).³⁸ The Accused objected to the admission of the Letter, arguing that it bore no relation to the List, to which the Expert finally agreed.³⁹ Furthermore, the Accused did not challenge the authenticity of the List and indicated that he considered that it had been compiled by Marko Kljajić.⁴⁰

³⁴ *Id.*, T(F) 10833-10834.

³⁵ *Id.*, T(F) 10837.

³⁶ *Id.*, T(F) 10838.

³⁷ *Id.*, T(F) 10838-10839.

³⁸ *Id.*, T(F) 10853.

³⁹ *Id.*, T(F) 10847-10850.

⁴⁰ *Id.*, T(F) 10847.

21. The Chamber considers that only the List bears sufficient indicia of relevance and probative value and therefore may be admitted into evidence.

6. List of 100 families (MFI P570)

22. The Chamber notes, that during the direct examination, the Accused challenged the authenticity of the List of 100 families, noting that it bore no official seal.⁴¹ The Expert indicated that this document was from the Office (or Bureau) on Missing and Detained Persons in Zagreb, headed by Colonel Grujić.⁴² The Accused also noted that Colonel Ivan Grujić was initially on the Prosecution's list of expert witnesses, and that the Prosecution recently decided not to call him because his credibility had been called into question.⁴³ In this connection, the Expert specified that it was not Colonel Grujić who had compiled the List of 100 families, but that he had made a request to the competent authority.⁴⁴ Moreover, when asked by the Chamber about the methodology used to create this document, the Expert did not answer with certainty.⁴⁵

23. The Accused next argued that the List of 100 families contained significant errors (in particular persons mentioned on several occasions and persons mentioned on the List of 100 families, even though they did not reside in Hrtkovci in 1992).⁴⁶ In this connection, the Expert responded that she herself identified 40 possible duplications,⁴⁷ and that in the former Yugoslavia one same person could reside in one place and work temporarily, or not, in another,⁴⁸ but that in any case she could revise and revisit this list.⁴⁹

24. On several occasions during the cross-examination, the Chamber noted that this List of 100 families was in fact erroneous and, as a result, considers that this document does not bear sufficient indicia of relevance and probative value and may not therefore be admitted into evidence.

⁴¹ *Id.*, T(F) 10857.

⁴² *Id.*, T(F) 10858.

⁴³ *Id.*, T(F) 10859.

⁴⁴ Hearing of 22 October 2008, T(F) 10927.

⁴⁵ Hearing of 21 October 2008, T(F) 10858.

⁴⁶ Hearing of 23 October 2008, T(F) 11023-11035 and 11040-11058.

⁴⁷ *Id.*, T(F) 11033-11034.

⁴⁸ *Id.*, T(F) 11026.

⁴⁹ *Id.*, T(F) 11036.

7. Tables 7, 8 and 9 (MFI P571)

25. The Chamber notes that the Accused raised no objection during the request for the admission into evidence of Tables 7, 8 and 9 on pages 21 and 23 of the Tableau Report.⁵⁰

26. The Chamber considers that since the Tableau Report has been admitted into evidence,⁵¹ Tables 7, 8 and 9, which are an integral part of it, may also be admitted into evidence.

8. Table 2 (MFI P572)

27. The Chamber notes that the Accused raised no objection during the request for the admission into evidence of Table 2 on page 10 of the Report.⁵²

28. The Chamber considers that since the Tableau Report has been admitted into evidence,⁵³ Table 2, which is an integral part of it, may also be admitted into evidence.

B. Admission of Evidence Presented by the Accused

29. In cross-examination, the Accused relied on the Report on the Slovak Minority (MFI P576) to criticize the Expert for failing to study the situation of the Slovaks.⁵⁴ He then relied on the Report on the Hungarian Minority (MFI P575) to challenge a statement by the Expert.⁵⁵ He did the same with the Report on the Romanian Minority (MFI P577),⁵⁶ the Report on the Ruthenian Minority (MFI P579),⁵⁷ as well as the Report on the Roma Minority (MFI P578).⁵⁸

30. The Chamber considers that these documents, which are from the provincial secretariat for national minorities in Serbia – a seemingly reliable source – bear sufficient indicia of relevance and probative value and may therefore be admitted into evidence.

⁵⁰ Hearing of 21 October 2008, T(F) 10873-10874.

⁵¹ *See supra*, para. 11.

⁵² *Id.*, T(F) 10883.

⁵³ *See supra*, para. 11.

⁵⁴ Hearing of 22 October 2008, T(F) 10946-10947.

⁵⁵ *Id.*, T(F) 10948-10949.

⁵⁶ *Id.*, T(F) 10951-10952.

⁵⁷ *Id.*, T(F) 10954.

⁵⁸ *Ibid.*

31. The Chamber notes that the Report on the Croatian Minority (MFI P574) and the Vojvodina Report (MFI P573) were not formally presented by the Accused in the course of the cross-examination, but were referred to, either directly or indirectly, by the Chamber and the Expert in cross-examination.⁵⁹ As such, their admission into evidence, requested by the Prosecution, is necessary in order to have a full picture of all of the ethnic minorities concerned by the Expert's Report.

V. DISPOSITION

32. For these reasons, in accordance with Rule 89(C) of the Rules, the Chamber **PARTIALLY GRANTS** the requests for admission into the record of the above-mentioned exhibits, and **ADMITS** the exhibits indicated in the table below, some of which are subject to the conditions set out by the Chamber.

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

/signed/

Jean-Claude Antonetti
Presiding Judge

Done this twenty-fifth day of February 2009
At The Hague
The Netherlands

[Seal of the Tribunal]

⁵⁹ *Id.*, 10955-10960.

ANNEX

Exhibit Number	Party proposing admission of the Exhibit	Admitted/Not admitted/Marked for identification (MFI)
P565	Prosecution	Admitted
P566	Prosecution	Admitted
P567	Prosecution	Admitted
P568	Prosecution	Admitted, subject to the Prosecution providing the necessary details about the source and date of the document – namely, the official request for assistance that was sent to the Croatian authorities in 2005 and the letter in response, to which the List of Refugees was attached – as well as detailed explanations from the authorities concerning the methodology used to prepare this document.
P569	Prosecution	Only the List is admitted
P570	Prosecution	MFI number not maintained
P571	Prosecution	Admitted
P572	Prosecution	Admitted
P573	Prosecution	Admitted
P574	Prosecution	Admitted
P575	Prosecution	Admitted
P576	Prosecution	Admitted
P577	Prosecution	Admitted
P578	Prosecution	Admitted
P579	Prosecution	Admitted