



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: 19 January 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Registrar: Mr John Hocking

Decision of: 19 January 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON PROSECUTION MOTION FOR ADMISSION OF THE
EXPERT STATEMENT OF ZORAN STANKOVIĆ**

The Office of the Prosecutor

Mr Mathias Marcussen

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 oral motion of the Office of the Prosecutor (“Prosecution”) made during the hearing of 15 January 2009 (“Motion”), whereby the Prosecution seeks the addition to the Prosecution exhibit list disclosed under Rule 65 *ter* of the Rules of Procedure and Evidence (“65 *ter* List” and “Rules” respectively) of the expert statement of Dr Zoran Stanković dated 8 July 2003 and 1 October 2003 (“Statement” and “Witness” respectively) and its admission into evidence;¹

NOTING the “*Décision relative à la qualité d’expert du Dr Zoran Stanković*” of 24 November 2008 (“Decision of 24 November 2008”), wherein the Chamber ordered that Dr Zoran Stanković appear before the Chamber in his capacity as an expert (“Expert”) for examination by the Prosecution and Vojislav Šešelj (“Accused”) and, if necessary, by the Chamber;

NOTING that in the Decision of 24 November 2008 the Chamber held that it would rule on the admission of the Witness Statement into evidence in the light of the testimony of the Expert in this case;

On the request to modify the 65ter List

NOTING the exhibit list submitted by the Prosecution under Rule 65 *ter* of the Rules and filed confidentially on 29 March 2007 (“65 *ter* List”);²

NOTING that Rule 65 *ter* (E)(iii) of the Rules provides that the Prosecution is to file the list of exhibits it intends to present within a time-limit set by the pre-trial Judge and six weeks before the Pre-Trial Conference at the latest;

CONSIDERING that the Prosecution sought leave to amend the 65 *ter* List since the Statement was not included on it;³

¹ Hearing of 15 January 2009, Transcript in French (T(F)), 13519.

² “Prosecution’s Notice of Filing Exhibit List pursuant to Rule 65 *ter*”, with confidential and *ex parte* Annex, 25 June 2007. A confidential, redacted version was filed on 29 March 2007.

CONSIDERING that the Accused raised no objections in this respect;

CONSIDERING that to grant a request to add exhibits to the Prosecution exhibit list – this addition must remain an exception – the Chamber must ensure that the rights of the Accused are respected by making sure that the additional exhibits are disclosed sufficiently in advance and that this addition will not cause prejudice to the Accused in the preparation of his defence,⁴ the Chamber will also take into account other factors such as relevance or any other reason it deems valid, such as the complexity of the case or the date when the Prosecution obtained the documents;⁵

CONSIDERING that the Prosecution presented the Expert Statement in the present case on 12 July 2006 in the submissions regarding the Expert,⁶ which the Accused received on 20 July 2007;⁷

CONSIDERING that the Statement was disclosed to the Accused sufficiently in advance, even before the commencement of the trial and more than a year before the appearance of the Expert;

CONSIDERING, moreover, that its addition to the 65 *ter* List does not cause prejudice to the Accused in the preparation of his defence;

CONSIDERING that it is therefore appropriate to grant the Prosecution request and proceed to add the Statement to the 65 *ter* List;

³ Hearing of 15 January 2009, T(F), 13537.

⁴ *The Prosecutor v. Milan Martić*, Case No. IT-95-11-PT, “Decision on Prosecution’s Motion to Amend its Rule 65 *ter* List”, 15 December 2005, p. 3 and *The Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić*, Case No. IT-04-74-T, “Decision on List of Exhibits”, 7 September 2007, p. 4.

⁵ *The Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević*, Case No. IT-05-88-T, “Decision on Prosecution’s Motion for Leave to Amend Rule 65 *ter* Witness List and Rule 65 *ter* Exhibit List”, confidential, 6 December 2006, p. 7.

⁶ “Prosecution’s Submission of the Expert Statement of Professor Dr. Zoran Stanković pursuant to Rule 94 *bis*”, with Annex A (the Statement) and Annex B (the autopsy reports), 12 July 2006.

⁷ *Procès-verbal* of Reception, filed on 1 August 2007 (D22159). The Accused previously refused to receive these documents (*see Procès-verbal* of Reception, filed on 11 August 2006 and 13 February 2007). The notice of the Accused pursuant to Rule 94 *bis* of the Rules (Submission 261) was filed in English on 16 April 2007: the Accused indicated that he had received the Prosecution’s submissions regarding the Expert on 9 February 2007, but maintained that no report or annex were disclosed to him (English translation of the original in BCS entitled “Professor Vojislav Šešelji’s Official Notice Concerning the Expert Report of Professor Dr. Zoran Stanković Submitted by the Prosecution pursuant to Rule 94 *bis*”, filed on 16 April 2007).

On the request to admit the Statement into evidence

NOTING Rule 89 (C) of the Rules;

NOTING the Order of 15 November 2007 setting out the guidelines for the presentation of evidence and the conduct of the parties during the trial;⁸

CONSIDERING that Rule 94 *bis* of the Rules governing the testimony of expert witnesses does not set any additional admissibility criteria to those already provided for under Rule 89 of the Rules;⁹

CONSIDERING that, at this stage of the proceedings, the Chamber has not proceeded to 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;¹⁰

CONSIDERING that the Accused objected to the admission of the Expert Statement into evidence, challenging its reliability on the grounds that the Statement was drafted in July 2003 and re-read in October 2003;¹¹

CONSIDERING that in the Statement, the Expert recounts the circumstances surrounding the autopsies of the bodies that he was asked to perform twice, at the end of April and the beginning of May 1992 in Zvornik, and that the Statement, which relates to the charges brought in paragraph 22 of the Indictment, is relevant to the case in point;

⁸ “Order Setting out the Guidelines for the Presentation of Evidence and the Conduct of the Parties During the Trial”, 15 November 2007.

⁹ “Decision on Admission of Evidence Presented during the Testimony of Yves Tomić”, 3 April 2008, para. 6 citing *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Case No. IT-02-60-T, “Decision on Prosecution’s Motion for Admission of Expert Statements”, 7 November 2003, para. 27; *The Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-T, “Decision on Prosecution’s Submission of Statement of Expert Witness Ewan Brown”, 3 June 2003, p. 5.

¹⁰ 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.

¹¹ Hearing of 15 January 2009, T(F), 13518.

CONSIDERING that Rule 94 *bis* of the Rules provides for the possibility for the parties to present expert reports or statements;

CONSIDERING that the Statement was used during the testimony of the Expert and, moreover, bears his signature on the English version sought to be admitted by the Prosecution;

CONSIDERING, consequently, that the Statement has sufficient relevance to be admitted into evidence;

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54, 65 *ter* (E)(iii) and 89 (C) of the Rules,

GRANTS the Motion.

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

 /signed/
Jean-Claude Antonetti
Presiding Judge

Done this nineteenth day of January 2010
At The Hague (The Netherlands)

[Seal of the Tribunal]