**UNITED**

**NATIONS**

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: 15 January 2008

English

Original: FRENCH

**IN TRIAL CHAMBER III**

**Before:**

**Judge Jean-Claude Antonetti, Presiding**

**Judge Frederik Harhoff**

**Judge Flavia Lattanzi**

**Registrar : Mr Hans Holthuis**

**Decision of: 15 January 2008**

**THE PROSECUTOR**

**v.**

**VOJISLAV ŠEŠELJ**

***PUBLIC DOCUMENT***

**DECISION ON THE QUALIFICATIONS OF EXPERT YVES TOMIĆ**

**The Office of the Prosecutor**

Ms Christine Dahl

**The Accused**

Mr Vojislav Šešelj

IT-03-67-T 6/26666 BIS

D6 - 1/26666 BIS

21 January 2008 AJ

Case no. IT-03-67-T 1 15 January 2008

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 “Submission of the Expert

Report of Yves Tomić” (“Witness”) filed by the Office of the Prosecutor (“Prosecution”) on 23

May 2006 (“Submission”).1

**I. PROCEDURAL BACKGROUND**

2. The Submission includes the expert report of Yves Tomić in “Annex A” (“Expert Report”)

and his *curriculum vitae* in “Annex B” (“Curriculum vitae”). Vojislav Šešelj (“Accused”) received

the Submission in a language which he understands on 31 May 2006 (“first Record”).2

3. On 12 July 2006, Trial Chamber I ordered that the Accused be given an extension of the

time to respond to the Submission, in accordance with Rule 94 *bis* (B) of the Rules of Procedure

and Evidence (“Rules”), until 1 September 2006.3 On 25 August 2006, the Accused submitted his

response (“Notice”),4 and on 22 November 2006, Trial Chamber I sent back the Notice because it

was too long.5

4. On 26 July 2007, the Notice was filed further to the Decision on the Third Motion of the

Accused for Admission of Documents 210, 211 and 212, issued by the Pre-Trial Judge responsible

for the case at that time.6

5. On 7 November 2007, the Prosecution filed the notice of the original version of the expert

Witness’ report in French (“Notice of the Expert Report in French”).7 On 9 November 2007, the

Accused received the Notice in a language which he understands of the Expert Report in French,

and a copy of the Expert Report identical to the one sent to him on 31 May 2006 (“second

Record”).8

1 Original in English , submitted on 1 February 2006 and filed on 23 May 2006.

2 Record of receipt of documents signed by the Accused on 31 May 2006.

3 Original title in English: “Decision Regarding Deadlines for Responses to Motions on Expert Witnesses and

Adjudicated Facts”, 12 July 2006.

4 Translation into English of BCS original entitled “Official Notice from Prof Dr Vojislav Šešelj Concerning the

Report by the Expert Witness Yves Tomić”.

5 Status conference of 22 November 2007, CRF. 802.

6 Decision on the third motion of the Accused for admission of documents 210, 211 and 212 (Number 268), 26 July

2007, p. 2.

7 Original in English entitled “Prosecution’s Notice of Filing of the Original Expert Report of Yves Tomić in French”,

7 November 2007.

8 Record of receipt of documents, signed by the Accused on 9 November 2007.

5/26666 BIS

Case no. IT-03-67-T 2 15 January 2008

6. On 20 November 2007, the Accused submitted document 341, in which he responded, *inter*

*alia*, to the Notice of the Expert Report in French (“Document 341”).9

**II. ARGUMENTS OF THE PARTIES**

7. In his Notice, the Accused states that he

i) challenges the Expert Report;

ii) wishes to cross-examine the Witness; and

iii) challenges the entire Expert Report and the qualifications of the Witness as an

expert.10

8. In his Notice, the Accused also again calls into question the Witness’ knowledge of the

history of the Serbian people, the content of the Expert Report and the methodology used.11

9. In Document 341, the Accused reiterates that he is challenging the Expert Report, that he

will cross-examine the Witness and will challenge the relevance of the entire Expert Report and the

qualifications of the Witness as an expert. The Accused states that he will introduce additional

evidence in support of his challenges.12

**III. APPLICABLE LAW**

10. Rule 94 *bis* (A) and (B) of the Rules reads as follows:

1. 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;

ii) it wishes to cross-examine the expert witness; and

iii) it challenges the qualifications of the witness as an expert and the

relevance of all or parts of the statement and/or report, and if so, which

parts.

9 Document 341, submitted on 20 November 2007 and filed on 27 November 2007, para. 3.

10 Notice, p. 2.

11 *Id*., pp. 2-3.

12 Document 341, para. 3.

4/26666 BIS

Case no. IT-03-67-T 3 15 January 2008

11. The term *expert* has been described 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.13*

12. Attributing the characterisation of expert to a witness called by one of the parties, in view of

the evidence it has presented., falls within the discretionary power of the Chamber.14 The Chamber

may inter alia use the *curriculum vitae*, articles, publications, professional experiences or other

information about the witness for which the characterisation of expert is required.15

**IV. DISCUSSION**

13. Since the BCS translation of the Expert Report in French which was sent to the Accused on

9 November 2007 was identical to the version sent to the Accused on 31 May 2006, the Chamber

will not examine Document 341 on this issue or the additional response to the Expert Report which

the Accused states that he wishes to file. In addition, by accepting the Notice, the Chamber has

already allowed the Accused to submit a 64-page response to the Expert Report.

14. The Witness’ field of expertise, not specifically indicated by the Prosecution in the

Submission, derives from the title of the Expert Report: Greater Serbian Ideology in the 19th and

20th Centuries.

15. The Witness holds a degree in research and advanced studies in civilisations earned in the

Serbo-Croatian language and a degree in advanced Slavic and Eastern European studies. He is

currently working on a doctoral thesis on the Serbian national question in Communist Yugoslavia

and is the author of many articles, works, essays and reports on the Serbian national question.. He

works in France as an advisor in education and is responsible for the Balkans section at the Library

for Contemporary International Documentation at the University of Paris X-Nanterre and is an

associate fellow at the Laboratory for the Analysis of Political Systems at the National Centre for

13 Decision on the qualifications of expert Anthony Oberschall, 30 November 2007 (*“Obershall”)*, p. 2. This decision

refers to *The Prosecutor v. Pavle Strugar*, Decision on the Defence Motions to oppose admission of expert

Prosecution reports pursuant to Rule 94 *bis*, Case no. IT-01-42-PT, 1 April 2004, p.4.

14 *Oberschall* Decision, p. 2 referring to *Sylvestre Gacumbitsi v. The Prosecutor,* Case no. ICTR-2001-64-A,

Judgement, 7 July 2006, para. 31

15 *Ibid*. This decision refers to *The Prosecutor v. Dragomir Milošević,* original in English entitled “Decision on

admission of Expert Report of Robert Donia”, Case no. IT-98-29/T, 15 February 2007, para. 7.

3/26666 BIS

Case no. IT-03-67-T 4 15 January 2008

Scientific Research. The Witness is also a consultant on the Balkans at the French Ministry of

Defence and president of the French Association for Balkan Studies.16

16. Given the Witness’ training, professional experience, his many publications and his

membership of professional associations, it appears that he is well versed in the cultural, social,

political and historical background of the former Yugoslavia. Accordingly, the Chamber considers

that he is qualified to testify as an expert within the meaning of Rule 94 *bis* of the Rules on the

matters raised in his report.

17. This notwithstanding, the Chamber considers that in view of the objections raised by the

Accused, that the Witness must appear before the Tribunal to respond to the questions put to him by

the Prosecution, the Accused, and the Chamber should it so desire. During the cross-examination,

the Accused will have the opportunity to challenge the probative value, relevance and reliability of

the conclusions set out in the Expert Report.

18. In light of the Witness’ testimony in this case, the Chamber will assess the relevance and

probative value of the Expert Report and will rule on whether that Report will be admitted into

evidence.

**V. DISPOSITION**

19. For these reasons, pursuant to Rule 94 *bis* of the Rules, the Chamber**, ORDERS** that,

i) Yves Tomić shall appear before the Chamber as an expert for questioning by the Parties

and the Chamber;

ii) the length of the examination-in-chief shall be limited to 4 hours; and

iii) should the Accused wish to cross-examine Yves Tomić, the cross-examination shall be

limited to 4 hours.

16 See Submission, Annex B.

2/26666 BIS

Case no. IT-03-67-T 5 15 January 2008

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

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Jean-Claude Antonetti

Presiding Judge

Done this fifteenth day of January 2008

At The Hague

The Netherlands

[**Seal of the Tribunal**]

1/26666 BIS