

**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-04-75-T
Date: 7 November 2012
Original: English

IN THE TRIAL CHAMBER

Before: Judge Guy Delvoie, Presiding
Judge Burton Hall
Judge Antoine Kesia-Mbe Mindua

Registrar: Mr. John Hocking

Decision: 7 November 2012

PROSECUTOR

v.

GORAN HADŽIĆ

PUBLIC

**DECISION ON PROSECUTION MOTION TO SUBSTITUTE EXPERT REPORT
OF EXPERT WITNESS (REYNAUD THEUNENS)**

The Office of the Prosecutor:

Mr. Douglas Stringer

Counsel for Goran Hadžić:

Mr. Zoran Živanović

Mr. Christopher Gosnell

1. **THIS 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 “Prosecution Notice of Filing the Amalgamated Report of Military Expert Reynaud Theunens and Motion to Substitute with a Case-Specific Report”, filed on 5 October 2012 (“Motion”). The Defence filed its “Response to Prosecution Notice of Filing the Amalgamated Report of Military Expert Reynaud Theunens and Motion to Substitute with a Case-Specific Report” on 19 October 2012 (“Response”). The Prosecution filed its “Prosecution Request for Leave to Reply and Reply to Response to Prosecution Notice of Filing the Amalgamated Report of Military Expert Reynaud Theunens and Motion to Substitute with a Case-Specific Report” on 29 October 2012 (“Reply”).

2. The Prosecution seeks authorisation to substitute the expert report of Reynaud Theunens with a new expert report prepared by Theunens.¹ The Prosecution submits that the new report is more concise than the current report and streamlines Theunens’ evidence to focus on crucial features of the military aspects of the present case against Hadžić.² The Prosecution submits that Theunens’ opinions and analysis of newly obtained material contained in the new report are relevant and probative to the present proceedings.³

3. The Defence responds that admitting the new report is not justified by good cause and would be prejudicial to the Defence.⁴ The Defence submits that the new report is substantially different than the existing report and has been tendered approximately three months after the deadline for disclosure of expert reports.⁵ The Defence argues that to grant the Motion would be to allow the Prosecution to enlarge Theunens’ testimony without proper notice and would be inconsistent with the purpose of Rule 94 *bis*.⁶

4. In accordance with Rule 94 *bis*, the Pre-Trial Judge ordered that the disclosure of expert reports in this case be made by 10 July 2012.⁷ On 4 July 2012, the Prosecution requested an extension of time for the disclosure of Theunens’ expert report; this request was denied by the Pre-Trial Judge.⁸ The Chamber finds that it would not be appropriate to allow the Prosecution to substitute the expert report of Reynaud Theunens with a new report.

¹ Motion, paras 1, 5, 10.

² Motion, paras 1, 5.

³ Motion, paras 1, 6-8.

⁴ Response, paras 2-4.

⁵ Response, para. 2.

⁶ Response, para. 5.

⁷ Order on Pre-Trial Work Plan, 16 December 2011, Annex, p. 1.

⁸ Decision on Prosecution Motion for Extension of Time for Disclosure of Expert Report of Reynaud Theunens, 10 July 2012, paras 5-6.

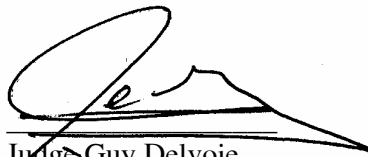
5. In addition, in order to prepare for the testimony of Reynaud Theunens, the Trial Chamber finds it appropriate to order the Prosecution to provide to the Chamber and the Defence a list of all documents it will seek to tender as evidence through this witness—well in advance of his in-court testimony. In doing so, the Prosecution shall ensure, by the deadline below, that all such documents are uploaded and released in eCourt and are accompanied by appropriate translations (attached to the original documents in eCourt).

6. For the foregoing reasons, the Trial Chamber, pursuant to Rules 54, 94 *bis*, and 126 *bis* of the Rules, hereby

- (a) **GRANTS** the Prosecution leave to file the Reply;
- (b) **DENIES** the Motion; and
- (c) **ORDERS** *ex proprio motu* the Prosecution to file—by no later than 22 January 2013—a list of all documents it will seek to tender as evidence through Reynaud Theunens.

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

Done this seventh day of November 2012,
At The Hague,
The Netherlands.



Judge Guy Delvoic
Presiding

[Seal of the Tribunal]