



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: 27 April 2009
Original: ENGLISH
French

IN TRIAL CHAMBER III

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

Acting Registrar: Mr John Hocking

Decision of: 27 April 2009

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC

**DECISION ON PROSECUTION MOTION TO AMEND ITS 65^{TER} EXHIBIT
LIST**

The Office of the Prosecutor

Mr Daryl Mundis
Ms Christine Dahl

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 motion filed on 29 January 2009 by the Office of the Prosecutor (“Prosecution”) to amend the 65 *ter* Exhibit List by adding two documents related to the testimony of Expert Ewa Tabeau (“Motion” and “Expert Tabeau” respectively),¹

NOTING that the Accused did not respond to the Motion within the 14-day time-limit prescribed by Rule 126*bis* of the Rules of Procedure and Evidence (“Rules”),²

NOTING the Decision on Admission of Evidence Presented during the Testimony of Ewa Tabeau, rendered on 25 February 2009 (“Decision of 25 February 2009”),³

CONSIDERING that the Prosecution requests that the following documents be added to the 65*ter* Exhibit List and admitted into evidence:⁴ 1) Prosecution Request for Assistance No. 1742 to the Republic of Serbia, dated 31 October 2008, requesting the disclosure of the 1991 and 2002 censuses for Hrtkovci (“Request for Assistance No. 1742”);⁵ 2) the response of the Republic of Serbia, dated 12 December 2008, refusing to grant the request for assistance on the principal ground that this data is confidential (“Response by Serbia”),⁶

CONSIDERING that the Prosecution also points out that the purpose of the Motion is to assist the Chamber in evaluating the testimony and report of Expert Tabeau (“Tabeau Report”),⁷

CONSIDERING that the Prosecution argues that Request for Assistance No. 1742 and the Response from Serbia confirm the testimony of Expert Tabeau of 22 October 2008 regarding her unsuccessful efforts to obtain the census data for 1991 and 2002 relevant to Hrtkovci from the Republic of Serbia,⁸

¹ Prosecution’s Motion to Amend Rule 65*ter* Exhibit List and for Admission of Evidence, submitted on 27 January 2009 and filed on 28 January 2009 (“Motion”).

² The Accused received a translation of the Motion on 16 March 2009, *see Procès-verbal* of Reception of 16 March 2009, filed on 18 March 2009.

³ Decision on Admission of Evidence Presented during the Testimony of Ewa Tabeau, 25 February 2009 (“Decision of 25 February 2009”).

⁴ Motion, para. 13.

⁵ Motion, para. 6. *See also*, Appendix A, “OTP Request for Assistance to the Government of Serbia”, No. 1742 (RFA 1742), 31 October 2008.

⁶ Motion, paras. 7-9. *See also* Appendix B, “Response to RFA No. 1742 by the Ministry of Foreign Affairs of the Republic of Serbia”, 12 December 2008.

⁷ Motion, para. 2. *See also* Exhibit P565, “The Out-Migration of Croats and other Non-Serbs from the Village of Hrtkovci in Vojvodina in 1992”, by Expert Ewa Tabeau, 29 June 2006 (“Tabeau Report”).

⁸ Motion, para. 11.

CONSIDERING that the Prosecution also argues that the addition of this evidence to the 65^{ter} Exhibit List will not prejudice the Accused,⁹

CONSIDERING that in order to grant a motion to add exhibits to a 65^{ter} list, the Chamber must be satisfied that this amendment is being made in the interests of justice,¹⁰

CONSIDERING therefore that the Chamber must:

(1) in application of Articles 20(1) and 21(4)(b) of the Statute of the Tribunal, ensure that the rights of the defence are duly protected and that all evidence is disclosed well in advance so as not to obstruct the Accused in the preparation of his defence,¹¹ and

(2) be satisfied that, taking into account the specific circumstances of the case, the Prosecution provided good cause to justify an amendment to its original list and that the newly offered material is relevant and of sufficient importance to justify the addition,¹²

CONSIDERING that, following the testimony of Expert Tabeau on 21, 22 and 23 October 2008, the Chamber, by the Decision of 25 February 2009, admitted into the record the Tabeau Report and several other pieces of evidence,¹³ finding that they presented sufficient indicia of relevance and probative value,¹⁴

CONSIDERING that the Chamber finds that it already has sufficient elements to assess the probative value of the testimony of Expert Tabeau and the Tabeau Report, provided it receives the supplementary evidence expressly sought by the Chamber in its Decision of 25 February 2009, which the Prosecution must still provide,¹⁵

⁹ Motion, para. 11.

¹⁰ See *The Prosecutor v. Milan Martić*, case no. IT-95-11-PT, Decision on Prosecution's Motion to Amend its Rule 65^{ter} Exhibit List, 15 December 2005, ("*Martić* Decision"), p. 3; *The Prosecutor v. Rasim Delić*, Case No. IT-04-83-T, "Decision on Urgent Prosecution Motion for Leave to Amend its Exhibit List", 17 October 2007 ("*Delić* Decision"), p. 3.

¹¹ See for example *The Prosecutor v. Vujadin Popović et al.*, Case No. IT-05-88-AR73.1, "Decision on Appeals Against Decision Admitting Material Related to Borovčanin's Questioning", 14 December 2007, ("*Popović* Decision") para. 37; *The Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1; Decision on the Prosecution Motion to Amend its Rule 65^{ter} Exhibit List, 21 December 2006 ("*Milošević* Decision"), p. 2; *The Prosecutor v. Prlić et al.*, Case No. IT-04-74-T, Decision on List of Exhibits, 7 September 2007 ("*Prlić* Decision"), p. 4; *Delić* Decision, p. 3.

¹² See *Popović* Decision, para. 37.

¹³ See Annex to the Decision of 25 February 2009.

¹⁴ Decision of 25 February 2009, para. 11.

¹⁵ The Chamber recalls that Exhibit P568 (List of Croatian Refugees from Vojvodina, "List of Refugees") was only admitted subject to the Prosecution providing the details on the source and date of this document — namely the official request for assistance sent to the Croatian authorities in 2005 and the written response to which the List of Refugees was attached — and detailed explanations from the relevant authority on the methods used to draw up this document.

FOR THE FOREGOING REASONS

PURSUANT TO Rules 54, 73(A) and 89(C) of the Rules,

DENIES the Motion.

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

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this twenty-seventh day of April 2009
At The Hague
The Netherlands

[Seal of the Tribunal]