



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-95-5/18-T

Date: 19 February 2010

Original: English

IN THE TRIAL CHAMBER

Before: Judge O-Gon Kwon, Presiding Judge
Judge Howard Morrison
Judge Melville Baird
Judge Flavia Lattanzi, Reserve Judge

Registrar: Mr. John Hocking

Decision of: 19 February 2010

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

DECISION ON EVIDENCE OF ROBERT DONIA

Office of the Prosecutor

Mr. Alan Tieger
Ms. Hildegard Uertz-Retzlaff

The Accused

Mr. Radovan Karadžić

Appointed Counsel

Mr. Richard Harvey

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’s Submission of Expert Reports by Robert Donia pursuant to Rule 94 *bis*”, filed on 5 February 2010 (“Submission”), and hereby issues this decision in relation thereto.

1. On 15 April 2009, the Office of the Prosecutor (“Prosecution”) provided notice of its disclosure of reports written by a proposed expert witness, Robert Donia, and its intention to rely on those reports at trial, in accordance with Rule 94 *bis* (A) of the Tribunal’s Rules of Procedure and Evidence (“Rules”).¹ In accordance with Rule 94 *bis* (B), the Accused then notified the Chamber that he does not challenge Donia’s expertise, nor the relevance of his reports, but that he wishes to cross examine him and reserves the right “to object at trial to opinions offered outside the expertise of the witness or to the relevance of specific testimony” given by him.²

2. The Prosecution has indicated that Donia will be among the first witnesses called to testify at trial, and that his evidence in chief will be offered partially in writing, pursuant to Rule 92 *ter*.³ It then filed the present Submission, requesting the Chamber to (a) admit into evidence three expert reports produced by Donia; (b) admit into evidence selected sources referred to in one of his reports; and (c) permit Donia to appear as an expert witness, to be examined by the parties and the Chamber.⁴ The Accused has not responded to the Submission, which, in light of this decision, is unnecessary at the present time.

3. The provisions of Rule 94 *bis* are primarily concerned with ensuring the timely disclosure of expert reports and statements, and allow for the admission of such a report or statement into evidence without the expert being called to testify in person, if the opposing party accepts it. Where the opposing party gives notice under the Rule that it (i) does not accept the statement or report, and (ii) wishes to cross-examine the witness, or (iii) challenges the qualifications of the expert, or the relevance of all or part of the statement or report, the Chamber must determine whether or not the witness can testify as an expert and, ultimately, if the report or statement is to be admitted into evidence.

¹ Prosecution’s Notice of Disclosure of Expert Reports by Robert Donia and his Curriculum Vitae, 15 April 2009.

² Response to Rule 94 *bis* Notice: Robert Donia, 11 May 2009, para. 3.

³ Prosecution’s Submission Regarding Order of Witnesses and List of Witnesses for March and April, 29 January 2010.

⁴ Submission, para. 22.

4. In light of the position taken by the Accused, Donia must be brought for cross-examination if his reports are to be admitted into evidence. The Accused has not challenged Donia's status as an expert, and the Chamber is satisfied on the basis of the information contained in his *curriculum vitae* that he is indeed an expert in the history of Bosnia and Herzegovina. He will, therefore, be permitted to testify as an expert witness in this case. However, accepting him as an expert witness does not necessarily mean that Donia's reports will be admitted into evidence in the case.⁵

5. For experts' reports to be admitted, they must be relevant and of probative value, falling within the accepted expertise of the witness, and must meet the minimum standards of reliability. This latter requirement necessitates the provision of sufficient information as to the sources used in support of the reports' conclusions, and these sources must be clearly indicated and accessible to allow the opposing party to challenge the basis upon which the expert reached those conclusions.⁶

6. The three reports authored by Donia which the Prosecution offers for admission in this case are entitled (1) The Origins of Republika Srpska, 1990–1992: a Background Report; (2) Thematic Excerpts from the Assembly of Republika Srpska, 1991–1996; and (3) Bosnian Serb Leadership and the Siege of Sarajevo, 1990–1995. Having reviewed these reports, the Chamber is satisfied that they are, *prima facie*, relevant and of probative value. Similarly, the Chamber is satisfied as to their *prima facie* reliability, and that they fall within the area of Donia's expertise.

7. A proper determination of the relevance, probative value, and reliability of the three reports cannot, in any event, be made until the witness is brought to testify and is cross-examined by the Accused. The Chamber will not, therefore, admit any of the reports into evidence at this time, but may do so when the witness gives his oral evidence in this case. Should the reports be admitted, in whole or in part, the weight to be ascribed to them by the Chamber will depend on a variety of factors, including any contrary expert evidence brought by the Accused, in its overall consideration of the evidence as a whole. Consequently, the Chamber's determination of whether to admit the 19 selected sources tendered by the Prosecution will be made following its decision on the admission of the reports.

⁵ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 31.

IV. Disposition

8. Accordingly, the Trial Chamber, pursuant to Rules 54 and 94 *bis* of the Rules, hereby **DECIDES** that Robert Donia may testify as an expert witness in the present case, at which time further decisions will be made as to the admission of his expert reports and selected sources.

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



Judge O-Gon Kwon
Presiding

Dated this nineteenth day of February 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶ See e.g., *Prosecutor v. Galić*, Case No. IT-98-29-T, Decision on the Prosecution Motion for Reconsideration of the Admission of the Expert Report of Professor Radinović, 21 February 2003, para. 9.