



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: IT-98-29-T
Date: 27 January 2003
Original: English

IN THE TRIAL CHAMBER

Before: Judge Alphons Orie, Presiding
Judge Amin El Mahdi
Judge Rafael Nieto-Navia

Registrar: Mr Hans Holthuis

Decision of: 27 January 2003

PROSECUTOR

v.

STANISLAV GALIĆ

**DECISION ON THE EXPERT WITNESS STATEMENTS SUBMITTED BY THE
DEFENCE**

Office of the Prosecutor:

Mr. Mark Ierace

Counsel for the Defence:

Ms. Mara Pilipović
Mr. Stéphane Piletta-Zanin

TRIAL CHAMBER I Section B (“the 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 (“the Tribunal”);

NOTING that the Defence filed seven expert witness statements on 20 November 2002, pursuant to Rule 94 *bis* of the Rules of Procedure and Evidence (“the Rules”);

NOTING the comments and guidelines provided orally by the Trial Chamber on 10 December 2002 (“the Oral Comments”);¹

BEING SEIZED of the “Prosecution’s Submission Concerning the Expert Statements Filed by the Defence” dated 17 December 2002 (“the Prosecution Submission”);

NOTING the “Defence’s Response on Prosecution’s Submissions Concerning the Expert Statements Filed by the Defence” dated 25 December 2002 (“the Defence Response”);

NOTING the “Prosecution Reply to Defence Motion Regarding Expert Witnesses” dated 10 January 2003 (“the Prosecution Reply”);

NOTING the Defence’s Additional Submissions filed on 14 January 2003 (“the Defence Additional Submissions”);

NOTING that the Prosecution opposes admission of six expert witness statements² on the ground that they do not meet the guidelines provided by the Trial Chamber with respect to expert witnesses;

NOTING that the Prosecution requests access to notes referred to in Dr. Radovan Radinović’s statement;

NOTING that the Defence responds that all expert witness statements submitted meet the guidelines of the Trial Chamber and that it is under no obligation to disclose the notes referred to in Dr. Radovan Radinović’s statement;

¹ T. 17058 to 17061.

² Expert witness statements of Dr. Kosta Čavoški, Dr. Dušan Dunjić, Dr. Jelena Guskova, Dr. Milan Kunjadić, Dr. Slavenko Terzić and Dr. Aleksandar Stamatović, Janko Vilicić and Miroljub Vukašinović.

NOTING that the Prosecution wishes to cross-examine all expert witnesses whose statements are admitted by the Trial Chamber ;

CONSIDERING that the procedure contemplated by Rule 94 *bis* does not affect the general power of the Trial Chamber to exclude evidence under Rule 89 of the Rules of procedure and evidence (“the Rules”);

CONSIDERING that an expert witness statement must relate to an issue in dispute at trial in order to constitute relevant evidence that may have probative value within the meaning of Rule 89 (C);

CONSIDERING that a determination on admissibility of evidence pursuant to Rule 89 must also take into account the specific nature of the evidence concerned;

CONSIDERING that the Trial Chamber has defined an expert witness as “a person whom by virtue of some specialised knowledge, skill or training, can assist the trier of fact to understand or determine an issue in dispute”;³

CONSIDERING that the party who submits the expert witness statement must provide the information necessary for the Trial Chamber to appreciate whether the witness presented as an expert meets the definition mentioned above;

CONSIDERING that the Trial Chamber is satisfied, on the basis of the curriculum vitae attached to either the statements or the Defence Response, that the authors of the statements submitted qualify as experts;

CONSIDERING that the Trial Chamber has further stated that “an expert witness is expected to give his or her expert opinion in full transparency of the established or assumed facts he or she relies upon and of the methods used when applying his or her knowledge, experience or skills to form his or her expert opinion”;⁴

CONSIDERING that the Appeals Chamber has stated that “an expert opinion is relevant only if the facts upon which it is based are true”, but has immediately specified that “it is for the Trial

³ *The Prosecutor v. Stanislav Galić*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p. 2.

⁴ *The Prosecutor v. Stanislav Galić*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p. 2. The four requirements were also set out in court on 8 July 2003, T. 11413-11414.

Chamber [...] to determine whether the factual basis for an expert opinion is truthful” and that “[t]hat determination is made in the light of all the evidence given”;⁵

CONSIDERING that the weight to be attributed to an expert witness statement will be appreciated by the Trial Chamber at the end of trial and in light of all the evidence adduced;

CONSIDERING that admission of evidence should be clearly distinguished from the weight and probative value that will eventually be given to each piece of evidence;

CONSIDERING that, under Rule 89 (D), a Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial;

CONSIDERING that the right to a fair trial first and foremost belongs to the accused, as it appears from Article 21 (2) of the Statute;

CONSIDERING that, as previously stated by the Trial Chamber, the mere fact that an expert witness appears in court does not mean that the whole expert witness statement will necessarily be admitted, nor does admission of the whole statement mean that the Chamber accepts its findings;⁶

CONSIDERING that a minimum degree of transparency in the sources and methods used is nevertheless required at the stage of admission in order for the Chamber to determine whether it deems the statements to have probative value within the meaning of Rule 89;

CONSIDERING that, in determining whether the minimum degree of transparency required at the stage of admission is met, the Trial Chamber takes into consideration the subject matter of the statement, the type of expertise concerned, as well as whether the statement refers to specific events explicitly charged in the indictment, or to background information;

CONSIDERING that three different categories of expert witness statements should be distinguished in those submitted by the Defence;

⁵ *The Prosecutor v. Zejnil Delalić & al.*, Judgement, IT-96-21-A, 20 February 2001, para. 594.

⁶ 10 December 2002, T. 17060.

Expert witness statements on the background of the conflict

CONSIDERING that three witness expert statements submitted by the Defence relate to the background of the conflict in the former Yugoslavia, and are prepared by respectively an expert in history, an expert in constitutional law and an expert in international relations;⁷

CONSIDERING that these fields of expertise are well-known for allowing multiple interpretations of a complex sequence of events; that differences in the expert opinions may well contribute to a better awareness of a possible variety of views on the background of the conflict;

CONSIDERING that it won't be of great assistance to the Chamber to have the expert being examined in great detail on the selection of the facts, the relevance and importance attributed to them by the expert, or the balance the expert has struck while considering what conclusions the facts would allow to draw;

Expert witness statements in ballistics and forensic medicine

CONSIDERING that three expert witness statements are prepared respectively by experts in ballistics and forensic medicine and primarily deal with specific events charged in the indictment;⁸

CONSIDERING that natural and physical sciences allow for far less margin of personal appreciation and interpretation of the sources and methodology used and therefore examination of these experts on the sources and methodology used may well require greater precision in order to properly evaluate the evidence;

CONSIDERING that, while the sources and methodology used in these three expert witness statements may not be fully transparent yet, the Chamber considers that they meet the degree of transparency that is required at the stage of admission;

⁷ Dr. Slavenko Terzić, "On the Past of Bosnia and Herzegovina (with Special Emphasis on Sarajevo)"; Prof. Dr. Kosta Čavoški, "Multi-ethnicity of Bosnia and Herzegovina and Casus Belli 1991-92"; Dr. Jelena Guskova, "Sarajevo Battlefield, Participants, Developments and Processes in the Light of the International Factors"

⁸ Milan Kunjadić, "Forensic Ballistics Expertise, Documentaion referring to Items 2-4, Sniping"; Prof. Dr. Dušan Dunjić, "Forensic Medicine Expertise of Documentation in Relation to Counts 2 until 4, Sniping Incidents"; Prof. Dr. Aleksandar Stamatović, Ass. Prof. Dr. Janko Viličić and Dr. Miroљub Vukašinović, "Expert analysis on the Shelling cases".

CONSIDERING that, while they may sometimes suggest conclusions which are in the exclusive domain of the Trial Chamber, those statements, by explaining what could be the conclusions if looked at the issue primarily from the perspective of the expert as a forensic scientist, can assist the Trial Chamber in making its final determination;

CONSIDERING that admission of these statements does not prevent the Trial Chamber from drawing its own conclusions on the basis of all the evidence adduced at trial, even if the expert witness evidence would not provide for support;

Military expert statement

CONSIDERING that, as far as the military expert witness statement is concerned,⁹ specific attention should be given to the transparency of sources and methods used;

CONSIDERING that, while the opinions expressed in the military expert witness statement do not always seem to be properly based on facts or methodology, it cannot be said that the statement does not in any way meet the requirements for admission;

CONSIDERING that, in view of the aforesaid consideration, the Chamber reiterates that admission of the statement does not mean that the Chamber will accept all its findings;

CONSIDERING that the sources used in support of any expert witness statement must be clearly indicated and easily accessible to the other party upon request, preferably in one of the official languages of the Tribunal;

CONSIDERING that the parties should co-operate if the tasks of translation are too cumbersome for the Defence;

CONSIDERING that the Trial Chamber will provide further instructions if the parties cannot solve the problems of access and translation on their own;

⁹ Prof. Dr. Radovan Radinović, "Sarajevo Battlefield, 1992-94, Military Expertise".

CONSIDERING that the sources on the basis of which Dr. Milan Kunjadić draws his conclusions are not indicated with the degree of specificity that is required to permit the Prosecution to properly prepare its cross-examination and the Trial Chamber to assess the witness expert statement;

CONSIDERING that the exact references, such as ERN numbers and exhibits numbers, of the documents used in support of the analysis of each sniping incident, should be provided;

CONSIDERING that the sources used in the other statements are sufficiently indicated and should be made available to the Prosecution upon request;

FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 and 21 of the Statute and Rules 89 and 94 *bis* of the Rules,

HEREBY

ADMITS all the expert witness statements submitted by the Defence;

GRANTS a maximum number of three (3) hours for the Defence to present the expert witness(es) on the background, the Defence being free to use this time to either examine all experts submitted or one or two of them ;

GRANTS a maximum number of three (3) hours for the Defence to present the expert witness Prof. Dr. Radovan Radinović;

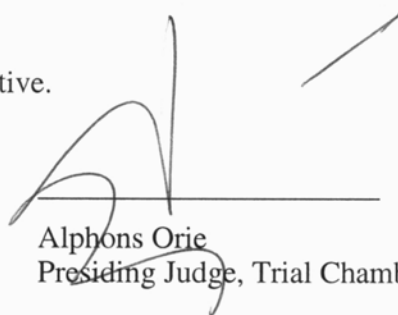
REQUESTS the Defence to provide a specification made by Dr. Milan Kunjadić regarding the sources he relied upon in his statement;

REQUESTS that the Defence makes available to the Prosecution those sources referred to in the statements that it would ask for, including the notes referred to in Prof. Dr. Radinović's statement, at least ten (10) days before the expert witnesses comes to testify;

INVITES the parties to co-operate on the issue of translation of annexes;

REQUESTS the Prosecution to indicate as soon as possible the estimated length of each cross-examination it intends to conduct.

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



Alphons Orie
Presiding Judge, Trial Chamber

Dated this twenty-seventh Day of January 2003
At The Hague,
The Netherlands.

[Seal of the Tribunal]