



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-05-87-T  
Date: 3 August 2007  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Iain Bonomy, Presiding  
Judge Ali Nawaz Chowhan  
Judge Tsvetana Kamenova  
Judge Janet Nosworthy, Reserve Judge

**Registrar:** Mr. Hans Holthuis

**Decision of:** 3 August 2007

**PROSECUTOR**

v.

**MILAN MILUTINOVIĆ  
NIKOLA ŠAINOVIĆ  
DRAGOLJUB OJDANIĆ  
NEBOJŠA PAVKOVIĆ  
VLADIMIR LAZAREVIĆ  
SRETEN LUKIĆ**

**PUBLIC**

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**DECISION ON PROSECUTION OBJECTIONS PURSUANT TO RULE 94 *BIS* TO  
EXPERT EVIDENCE OF RATKO MARKOVIĆ**

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**Office of the Prosecutor**

Mr. Thomas Hannis  
Mr. Chester Stamp

**Counsel for the Accused**

Mr. Eugene O'Sullivan and Mr. Slobodan Zečević for Mr. Milan Milutinović  
Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović  
Mr. Tomislav Višnjić and Mr. Norman Sepenuk for Mr. Dragoljub Ojdanić  
Mr. John Ackerman and Mr. Aleksandar Aleksić for Mr. Nebojša Pavković  
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević  
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

**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 seized of “Mr. Milutinović’s Rule 94 *bis* Submission Regarding Constitutional Expert Professor Dr. Ratko Marković,” filed on 15 June 2007 (“Submission”), and the Prosecution’s “Notices Pursuant to Rule 94 *bis*,” filed 11 July 2007 (“Notice”), and hereby renders its decision thereon.

1. In the Notice, the Prosecution objects to Ratko Marković being permitted to testify as an expert witness and to the admission of his report and gives notice that it wishes to cross-examine him, should he be permitted to testify as an expert witness. The Prosecution challenge is not based on Marković’s knowledge, training, and experience, but relates to his close connections with some members of the alleged joint criminal enterprise and his intimate involvement in crucial events related to the Indictment in this case. According to the Prosecution, his personal involvement in pertinent events could make his opinions unreliable.<sup>1</sup> To support this argument, the Prosecution refers to the Trial Chamber’s ruling with regard to witness Philip Coo in which the Trial Chamber disallowed him to offer evidence as an expert due to his closeness to the Prosecution.<sup>2</sup> The Prosecution, however, is not opposed to Marković testifying as a fact witness.<sup>3</sup>

2. On 27 July 2007, pursuant to the Trial Chamber’s Order of 20 July 2007, the Defence for Milutinović (“Defence”) filed a response in which it requests that the Trial Chamber deny the relief requested by the Prosecution in relation to Marković.<sup>4</sup> The Defence argues, *inter alia*, that Marković’s testimony on the authority and competence of the President of the Republic of Serbia is based solely on his experience and credentials as a professor of constitutional law and can therefore not be considered unreliable. Additionally, nothing in the expert report prepared by Marković suggests that he can be disqualified as an expert because of closeness to one of the parties because he based his academic report solely on his research of the relevant constitutions and laws which is entirely independent and scientific in nature.<sup>5</sup>

3. The Trial Chamber considers that the comparison with regard to the closeness of an expert witness to one of the parties made by the Prosecution between Marković and Coo is unfounded. In the Trial Chamber’s view, there is a clear distinction between Coo and Marković: Coo was a

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<sup>1</sup> Notice, paras. 4–11.

<sup>2</sup> Notice, para. 8.

<sup>3</sup> Notice, para. 12.

<sup>4</sup> Response, p. 7.

<sup>5</sup> Response, paras. 9–12.

member of the Prosecution team involved in the investigation and preparation of the Prosecution case, while Marković participated in historical events relating to the Indictment.

4. Nevertheless, the Trial Chamber recognises that it is possible that an expert's involvement in the events on which he reports could have an adverse impact on his impartiality and hence on the weight, if any, that the Trial Chamber might give to his opinions.


5. In this case, the Trial Chamber considers that the concerns raised by the Prosecution with regard to Marković's independence, bias, impartiality, the accuracy of his evidence, or the extent to which his evidence will be helpful to this case can only be determined after the Trial Chamber hears the evidence of Marković and other evidence relating to matters discussed by him.

6. The Prosecution further submits that Marković's report should not be admitted to the extent that it contains some opinions and conclusions that touch upon matters falling within the sole jurisdiction of the Trial Chamber.<sup>6</sup> The report does not appear to include any expressions of opinion beyond the competence of the witness. The Trial Chamber therefore rejects this submission.

7. Having considered all the arguments of the parties, the Trial Chamber, pursuant to Rules 54, 89, and 94 *bis* of the Rules of Procedure and Evidence, hereby **DECIDES** as follows:

- a. Ratko Marković shall be allowed to testify as an expert under reference to his report on matters relevant to the authority and competences of the President of the Republic of Serbia under the Constitutions of the FRY and Serbia and relevant legislation as defined in Milutinović's Rule 65 *ter* Submission.
- b. Ratko Marković shall be required to appear for cross-examination.

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

  
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Judge Iain Bony  
Presiding

Dated this third day of August 2007  
At The Hague  
The Netherlands

[Seal of the Tribunal]

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<sup>6</sup> Notice, para. 11.