



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: 5 October 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: 5 October 2007

PROSECUTOR

v.

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

PUBLIC

**DECISION ON PROSECUTION OBJECTIONS PURSUANT TO RULE 94 *BIS* TO
EXPERT EVIDENCE OF RADOVAN RADINOVIĆ**

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 seised of the “Prosecution’s Notice Re Expert Witness Radovan Radinović”, filed on 3 October 2007 (“Notice”), and the “Public Corrigendum to Prosecution’s Notice Re Expert Witness Radovan Radinović”, filed on 4 October 2007, and hereby confirms its oral ruling thereon.

1. In its Notice, the Prosecution opposes the admission of Sections 3.1, 3.2.4, 5, and 6 of Chapter One, and section V of Chapter Two of Radinović’s expert report, arguing that these sections fall outside his expertise.¹ Additionally, the Prosecution argues that the report fails to meet the minimum standards of reliability, and that Radinović has failed to provide citations or verifiable documentation to support the conclusions set forth therein.² The Prosecution finally requests the Chamber to allow cross-examination of Radinović pursuant to Rule 94 *bis* (B)(ii) of the Rules of Procedure and Evidence of the Tribunal (“Rules”) in the event he is allowed to testify as an expert.³
2. On 4 October 2007, the Ojdanić Defence filed its response to the Notice, countering the Prosecution’s objections to portions of the report and providing detailed arguments why it should be admitted into evidence.⁴
3. On 5 October 2007, having considered all the arguments of the parties, the Chamber issued an oral ruling, as follows:

[W]e shall excise from the report the section on the Kosovo Liberation Army. That’s Chapter 1 at 3.1. We do not think it’s necessary even as background to the matters on which the expert is to report, and it would not be admissible evidence of the truth of the facts, in any event, being based on – on remote sources when we already, of course, have evidence about the Kosovo Liberation Army and parties may yet lead more. We shall also excise the material relating to the migrations of the civilian population. That’s simply a catalogue of possibilities that are matters for counsel to make submissions on based on actual evidence. So that’s Chapter 2 at 5. We will not excise the parts relating to the internationalisation of the conflict, the escalation of the conflict, or the forces of the MUP, since we think all of these are necessary background. And we also think they are presented in a way which is consistent with an expert’s approach to matters, which is not really the situation particularly in relation to the passage on the Kosovo Liberation Army and its relationship with NATO. Now, obviously if any of the material we excise turns out to be necessary to enable the witness to express his opinions accurately, then counsel will address these in the course of his oral evidence so that any material that has to be presented from these areas which we exclude is presented in a focused and clearly

¹ Notice, paras. 4–5.

² Notice, paras. 6–7.

³ Notice, para. 2.

⁴ General Ojdanić’s Response to Prosecution’s Notice Re Expert Witness Radovan Radinović, 4 October 2007, paras. 4–9.

relevant way. Now, obviously, if any of the material we excise turns out to be necessary to enable the witness to express his opinions accurately, then counsel will address these in the course of his oral evidence so that any material that has to be presented from these areas which we exclude is presented in a focused and clearly relevant way.

4. The Chamber considers, with respect to the Section 3.1 of the report relating to the KLA, that (a) this section of the report is based upon information compiled by third-parties, which is not in the witness's direct knowledge, and (b) Radinović does not possess the necessary expertise to give evidence on the topics contained therein. In addition, the Trial Chamber considers with respect to Section V, Chapter Two, that it relates to possible conclusions that it is for the Chamber to consider in light of the evidence it accepts.

5. For the foregoing reasons and pursuant to Rules 54, 89, and 94 *bis* of the Rules, the Trial Chamber hereby CONFIRMS its oral ruling and DECIDES as follows:

- a) Radovan Radinović shall be allowed to testify as an expert under reference to his report on matters relevant to the military structure, in particular about the command and control structure of the VJ forces during the NATO bombing and Ojdanić's role in that structure.
- b) Section 3.1, Chapter One, entitled "Kosovo Liberation Army (OVK/KLA)" and Section V, Chapter Two, entitled "Attitude Towards the Civilian Population" of Radovan Radinović's expert report shall not be admitted into evidence.
- c) Radovan Radinović shall be required to appear for cross-examination.

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



Judge Iain Bonomy
Presiding

Dated this fifth day of October 2007
At The Hague
The Netherlands

[Seal of the Tribunal]