



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations
of International Humanitarian Law
Committed in the Territory of
Former Yugoslavia since 1991

Case No. IT-94-2-R61
Date 20 October 1995
Original: French
ENGLISH

IN THE TRIAL CHAMBER

Before: Judge Jorda, Presiding
Judge Odio Benito
Judge Riad

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 20 October 1995

THE PROSECUTOR

v.

DRAGAN NIKOLIĆ a/k/a "JENKI"

**DECISION ON THE REQUEST BY THE OFFICE OF THE
PROSECUTOR CONCERNING STATEMENT 7.15**

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Teresa McHenry

PROCEDURAL BACKGROUND

1. At the hearing on 13 October 1995 the Office of the Prosecutor indicated that it no longer intended to rely on Statement 7.15, and that it was urging that the latter be withdrawn from the case file supporting the indictment.
2. The Trial Chamber reserved its judgement for deliberation.
3. It reopened the deliberations *in camera* and was given the following further explanation by the Office of the Prosecutor.
4. The Office of the Prosecutor stated that it was dropping its initial request to have the document withdrawn, and explained its new position, as follows. The witness whose statement was at issue has let it be known that he or she no longer intends to testify before the Tribunal, which the Office of the Prosecutor accepts. Accordingly, the Office of the Prosecutor has asked the Chamber not to rely on that statement when confirming the indictment, should it have planned to do so. Further, such a decision by the Chamber would safeguard the rights of the accused for the future.

DECISION

5. Under Rule 61 the Prosecutor must submit to the Trial Chamber the original indictment and all the evidence that was before the confirming Judge.
6. In addition, other evidence which the Prosecutor deems worth bringing to the Judges' attention may be added (Rule 61(C)).
7. In this instance, the Office of the Prosecutor submitted the entire case file to the Trial Chamber, strictly in accordance with the Rules, thereby satisfying the first condition. However, the question remains whether the Chamber may exclude from its deliberations a document that was part of the initial file.
8. It should be borne in mind that Rule 61 gives the Office of the Prosecutor full opportunity to provide evidence other than that contained in the initial case file.

9. On that basis, any new information provided by the Prosecutor, the only party to the proceeding at this stage, may be regarded - *lato sensu* - as consistent with the scope granted it by Rule 61(C) to tender any additional evidence to support the Judges' determination.
10. It would seem in this instance that, by his request, the Prosecutor was seeking to bring the initial case file up to date in order to safeguard the rights of the accused for the future. As a result, and for the sake of the proper administration of justice, the Chamber admits the Prosecutor's request.

For the foregoing reasons, THE TRIAL CHAMBER HEREBY GRANTS the Prosecutor's request and confirms that Statement 7.15 shall not be taken into consideration by the Trial Chamber during the review of the indictment.

Claude Jorda
Presiding Judge

Dated this twentieth day of October 1995
The Hague,
The Netherlands.