



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-98-29-T
Date: 12 April 2002
Original: English
French

IN THE TRIAL CHAMBER

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

Registrar: Mr. Hans Holthuis

Decision of: 12 April 2002

THE PROSECUTOR

v.

STANISLAV GALIĆ

**DECISION ON THE DEFENCE REQUEST
BASED ON RULE 94 BIS(A) OF THE RULES**

The Office of the Prosecutor:
Mr. Mark Ierace

Defence Counsel:
Ms. Mara Pilipović
Mr. Stéphane Piletta-Zanin

SECTION B OF TRIAL CHAMBER I (hereinafter “the 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 (hereinafter “the Tribunal”);

NOTING Article 21 of the Statute and Rules 90 and 94 *bis* of the Rules of Procedure and Evidence of the Tribunal (hereinafter “the Rules”);

NOTING the Request filed by the Defence on 13 March 2002 requesting the Chamber to render a decision instructing the Prosecution to file the statements of the expert witnesses in a prescribed time-limit before calling them to appear before the Chamber in accordance with Rule 94 *bis*(A) of the Rules (hereinafter “the Request”);

CONSIDERING that at the hearing of 12 March 2002 the Prosecutor stated her intention to call at least nine expert witnesses under Rule 94 *bis*;

CONSIDERING that at the hearing of 6 March 2002 the Prosecutor indicated that the statements of some expert witnesses whom she characterised as “analyst” witnesses could be filed only at the conclusion of the Prosecution case on the ground that those statements were to include the analysis of many documents recently disclosed by the Defence; that consequently the said expert witnesses might not appear immediately after the last prosecution witnesses;¹

CONSIDERING that the Defence states that at the hearing of 12 March 2002 the Prosecutor somewhat clarified the issue of whether or not some of the Prosecution witnesses, whose identities are still unknown to the Defence, will make statements in accordance with Rule 94 *bis*;

CONSIDERING that the Defence agrees to some of the expert witnesses, whose statements are currently being prepared, presenting those statements at the end of the Prosecution’s examination-in-chief;

¹ Hearing of 6 March 2002, English transcript, T. 4896-97. Richard Philip and Rick Butler are the expert witnesses called.

CONSIDERING however that the Defence remains dubious as regards the Prosecution's satisfying the requirements of Rule 94 *bis*(A) of the Rules and that it requests the Chamber to instruct the Prosecution to respect a minimum time-limit of twenty days in which to file the expert statements before the expert witnesses appear, the time which the Defence considers necessary to examine the statements in order to prepare its cross-examination and to allow the accused to familiarise himself with the statements in the language which he understands, that is Serbian;

CONSIDERING that the concern for the proper administration of justice and respect for the rights of the Defence, provided for in Article 21 of the Statute, require that the Defence have both clear and exact information as to the number and identity of the witnesses which the Prosecution intends to call as expert witnesses and also adequate time to prepare its cross-examination if it so wishes;

CONSIDERING that only two statements have been filed to date; that no other statement has been disclosed to the Defence or filed with the Chamber;

CONSIDERING that under these circumstances, in accordance with the spirit of Rule 94 *bis* of the Rules, the Chamber must set the date for the filing of the expert statements and to ensure, in particular, that a reasonable time-limit is respected between the date on which the statement is filed and the possible appearance of the expert witness;

CONSIDERING that, pursuant to Rule 94 *bis*(B), the Defence has either a time-limit of thirty days or any other time-limit prescribed by the Chamber, as of the filing of the expert witness statement, to indicate to the Chamber whether it accepts the statement or wishes to conduct a cross-examination;

CONSIDERING that pursuant to Rule 90(C) of the Rules, the Chamber authorises the Defence expert witnesses to be present at the examination of the Prosecution expert witnesses by the Prosecutor;

CONSIDERING that, during the examination-in-chief and the cross-examination, the parties must keep in mind the fact that the Chamber will have already reviewed the expert statements;

CONSIDERING that the expert witness statements must be submitted in one of the two official languages of the Tribunal and translated into a language which the accused understands, in this case B/C/S;

CONSIDERING that, at the appropriate time, the Prosecutor and the Defence must take into consideration the time necessary for the translation and ensure that the translation may be carried out in the time-limits prescribed;

CONSIDERING that, with this in mind, the Prosecutor must ensure that the length of the statements submitted allows her to comply with the aforesaid requirements, given that the parties have the responsibility of co-operating and that they might, in particular, agree on the drafting of a summary which alone would be translated into B/C/S;

CONSIDERING that in the case of a disagreement and if necessary it would be possible for the Prosecutor to submit a request to the Chamber for authorisation to file only a summary translated into B/C/S;

FOR THE FOLLOWING REASONS,

The Trial Chamber,

ORDERS the Prosecutor to file the expert statements she intends to present as soon as possible and at the latest by 25 May,

REMINDS the Prosecutor that she must file the statements both in one of the official languages of the Tribunal and in the language understood by the accused, that is B/C/S;

DECIDES however that the Prosecutor may submit the B/C/S version 15 days at most after the statement has been filed in one of the official languages of the Tribunal;

SETS a time-limit of 30 days maximum between the filing of the expert statement and the time when the Defence must indicate to the Chamber whether it accepts the statement or if it wishes to cross-examine the expert witness;

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

ORDERS the Prosecutor to respect a time-limit of at least 45 days between the filing of the expert witness statement and the appearance of that witness;

STATES that the Defence experts may be present in the courtroom but may not participate in the proceedings while the expert witnesses presented by the Prosecutor are testifying, provided however that the Defence has previously so informed the Chamber and the Prosecution.

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

Done this twelfth day of April 2002
At The Hague
The Netherlands

(signed)

Judge Alphons Orié
Presiding Judge of the Trial Chamber

[Seal of the Tribunal]