



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-02-54-T
Date: 30 October 2003
Original: English

IN THE TRIAL CHAMBER

Before: Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Order of: 30 October 2003

PROSECUTOR

v.

SLOBODAN MILOŠEVIĆ

**DECISION ON PROSECUTION'S SUBMISSION OF THE EXPERT REPORTS OF
HELGE BRUNBORG PURSUANT TO RULE 94bis AND MOTION FOR THE
ADMISSION OF TRANSCRIPTS PURSUANT TO RULE 92bis(D)**

The Office of the Prosecutor

Mr. Geoffrey Nice

The Accused

Slobodan Milošević

Amicus Curiae

Mr. Steven Kay
Mr. Branislav Tapušković
Mr. Timothy McCormack

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 (“the International Tribunal”),

BEING SEISED of the Prosecution’s Submission of the Expert Reports of Helge Brunborg Pursuant to Rule 94bis and Motion for the Admission of Transcripts Pursuant to Rule 92bis(D), filed on 20 October 2003 (“Motion”) by the Office of the Prosecutor (“Prosecution”), seeking the admission into evidence of the transcripts and associated exhibits of Helge Brunborg’s evidence given in the trial Prosecutor v. Radislav Krstić (“Krstić transcripts”), as well as the “Report on the Number of Missing and Dead from Srebrenica” dated 12 February 2003 and “Addendum on the Number of Missing and Dead from Srebrenica” dated 12 April 2003 (together “Expert Reports”),¹

NOTING that the Prosecution accepts that this witness be required to attend for cross-examination by the Accused in respect of his testimony in the *Krstić* trial,

NOTING that it is expected that the Prosecution will seek to ask supplemental questions in chief and admit further exhibits when Helge Brunborg testifies,

NOTING that the Prosecution proposes that the “Report on the Size and Ethnic Composition of the Population of Kosovo” dated 14 August 2003 and “Addendum on the Size and Ethnic Composition of the Population of Kosovo” dated 12 September 2003 (together “Kosovo Reports”), and the Expert Reports be introduced on 20 November 2003, where Helge Brunborg is scheduled to testify,

NOTING the Amici Curiae Reply to Prosecution Submission of the Expert Reports of Helge Brunborg Pursuant to Rule 94bis and Motion for the Admission of Transcripts Pursuant to Rule 92bis(D) Dated 20 October 2003, filed on 27 October 2003 (“Reply”) by the Amici Curiae (“Amici”),

NOTING the *Amici* submission that, in the light of the Scheduling Order of 24 May 2002, the Prosecution are applying to introduce a new expert report with new material and that, in the circumstances, the Prosecution should not be given leave to call the evidence in the Expert Reports submitted under the Motion,

NOTING the *Amici* submission that the opportunity should not be taken for evidence to be adduced which is additional or supplemental to the original report, which would otherwise be contrary to Rule 94bis which requires service of a full report, although it would be acceptable to explain the report, but not to use live testimony as a means of providing new information which takes the other party by surprise,

NOTING the *Amici* submission that, as per the Trial Chamber Decision on Prosecution's Application for Admission of Written Statement of Dr. Berko Zečević Pursuant to Rule 92bis(A), dated 9 September 2003 ("*Zečević Decision*"), the proper procedure for calling expert evidence is under Rule 94bis, that Helge Brunborg is to be called to give evidence anyway, that the *Krstić* Transcripts are being used in addition to the Expert Reports, and that the evidence is not being used *in lieu* of oral testimony, which constitute an incorrect use of the Rule 92bis procedure,

NOTING that Rule 92bis(D) provides:

A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.

NOTING that Rule 94bis provides

(A) The full statement of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge.

(B) Within thirty days of disclosure of the statement of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:

(i) it accepts the expert witness statement; or

(ii) it wishes to cross-examine the expert witness; and

(iii) it challenges the qualifications of the witness as an expert or the relevance of all or parts of the report and, if so, which parts.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

NOTING Articles 20 and 21 of the Statute,

CONSIDERING the Accused's general opposition to the admission of Rule 92bis evidence,

¹ Annexes B and C to the Motion.
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CONSIDERING that the evidence presented therein does not go to proof of the acts and conduct of the Accused, that it is not proximate to the Accused; and that it is not so pivotal to the issues in the case and is therefore admissible under Rule 92bis,

CONSIDERING the *Zečević* Decision which denied the Prosecution's motion to admit the written statement of Berko Zečević, subject for the witness being available for cross-examination by the Accused,


CONSIDERING that the witness is an expert and therefore the proper procedure to be followed in calling his evidence is set out under Rule 94bis,

PURSUANT TO Rules 92bis and 94bis of the Rules,

HEREBY ORDERS as follows:

- (i) the *Krstić* Transcripts shall not be admitted, and
- (ii) the Expert Reports shall be admitted.

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


Richard May
Presiding

Dated this thirtieth day of October 2003
At The Hague
The Netherlands

[Seal of the Tribunal]