



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-99-37-PT

Date: 29 September 2004

Original: English

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge O-Gon Kwon
Judge Iain Bonomy

Registrar: Mr. Hans Holthuis

Decision of: 29 September 2004

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ**

**FURTHER ORDER TO PROSECUTION TO
RESPOND TO DEFENCE NOTICES
PURSUANT TO RULE 94 *bis*(B)**

The Office of the Prosecutor

Mr. Geoffrey Nice
Ms. Cristina Romano

Counsel for Milan Milutinović

Mr. Eugene O'Sullivan
Mr. Slobodan Zečević

Counsel for Nikola Šainović

Ms. Toma Fila
Mr. Vladimir Petrović

Counsel for Dragoljub Ojdanić

Mr. Tomislav Višnjić
Mr. Peter Robinson

I, **Iain Bonomy**, Judge 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 ("International Tribunal"),

HAVING BEEN DESIGNATED as the pre-trial Judge in this case by virtue of an Order of the Trial Chamber dated 30 August 2004,¹

BEING SEISED OF the "Prosecution's Response to Defence Notices pursuant to Rule 94 *bis* (B)" filed on 24 September 2004 ("Prosecution's Response"), in which the Prosecution purports to respond to the Defence Notices pursuant to Rule 94 *bis*(B) of the Rules of Evidence and Procedure, filed by the Defence for Šainović² and Ojdanić³ on 26 August 2004 and by the Defence for Milutinović⁴ on 27 August 2004 (hereafter "Defence Notices"), pursuant to an Order of the Trial Chamber of 28 July 2004,⁵ with regard to eight expert reports which had been disclosed by the Prosecution in 2003 and early 2004,⁶

NOTING that at the Status Conference on 15 September 2004, I, as pre-trial Judge, invited the Prosecution to respond to the Defence Notices with a view to considering whether the position can be dealt with and clarified in advance of the trial, and that the Prosecution agreed to this course,

FURTHER NOTING that I made an oral order at the Status Conference requiring the Prosecution to respond to the three Defence Notices within 14 days,⁷

NOTING that it was not decided that any ruling as to the admissibility or exclusion of the expert reports would be made at the pre-trial stage,

¹ *Prosecutor v. Milutinović, Šainović and Ojdanić*, Case No. IT-99-37-PT, "Order Designating Pre-Trial Judge", 30 August 2004.

² *Prosecutor v. Milutinović, Šainović and Ojdanić*, Case No. IT-99-37-PT, "Defence Notice: Pursuant to Rule 94*bis* (B)", 26 August 2004.

³ *Prosecutor v. Milutinović, Šainović and Ojdanić*, Case No. IT-99-37-PT, "General Ojdanić's Notice Pursuant to Rule 94*bis*", 26 August 2004.

⁴ *Prosecutor v. Milutinović, Šainović and Ojdanić*, Case No. IT-99-37-PT, "Confidential Rule 94*bis* Notice Filed on Behalf of Mr. Milan Milutinović Pursuant to the Scheduling Order of 28 July 2004", 27 August 2004.

⁵ "Scheduling Order for Filing of Notices Pursuant to Rule 94 *bis*", 28 July 2004.

⁶ The expert reports concerned pertain to Budimir Babović, Dr. Eric Baccard, Patrick Ball, Helge Brunborg, Sir Peter De La Billiere, Ivan Kristan, Andreas Riedlmayer and Morten Torkildsen. The Trial Chamber has ordered the Prosecution to disclose the final versions of the outstanding four expert reports by 28 October 2004; *Prosecutor v. Milutinović, Šainović and Ojdanić*, IT-99-37-PT, "Scheduling Order for Filing of Notices Pursuant to Rule 94*bis*", 28 July 2004.

⁷ *Prosecutor v. Milutinović, Šainović and Ojdanić*, Case No. IT-99-37-PT, Hearing, 15 September 2004, T.703 – 704.

CONSIDERING that whether to make such a ruling will be a matter for the Trial Chamber as a whole, and that the parties will be given an opportunity to make submissions relating to the propriety of that course in the event that the Trial Chamber decide to consider it,

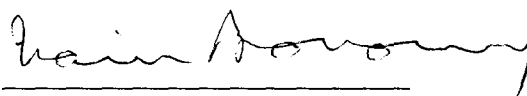
FURTHER CONSIDERING that plainly the order made at the Status Conference was for the Prosecution to address the merits of the challenges raised in the Defence Notices with a view to ensuring that early detailed consideration was given by the Prosecution to the issues raised in the Defence Notices, and that those that might be resolved were resolved, and that those that would require judicial determination were clearly identified,

NOTING that the Prosecution's Response does not in fact address the merits of the challenges made in the Defence Notices but rather seeks relief by requesting that the parties make substantive arguments before the Trial Chamber which will have conduct of the trial,

PURSUANT TO Rule 54 and Rule 94 *bis* of the Rules of Procedure and Evidence

HEREBY FURTHER ORDER the Prosecution to respond to the merits of the challenges raised in the Defence Notices within 7 days of the date of this order.

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



Iain Bonomy
Pre-Trial Judge

Dated this twenty-ninth day of September 2004
At The Hague
The Netherlands

[Seal of the Tribunal]