



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: 3 August 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: 3 August 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 ERIC FRUITS AND RADOMIR LUKIĆ**

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 seized of “General Ojdanić’s 94 *bis* Submission Regarding Joint Expert Eric Fruits,” filed on 15 June 2007, “Defence Submission Expert Report Pursuant to Rule 94 *bis*”, filed by the Šainović Defence on 15 June 2007, and the Prosecution’s “Notices Pursuant to Rule 94 *bis*,” filed 11 July 2007 (“Notice”), and hereby renders its decision thereon.

1. In its Notice, the Prosecution objects to Eric Fruits being permitted to testify as an expert witness and the admission of his report on two grounds: (a) that the contents of his report are beyond the scope of his training and expertise and (b) that the method used by the witness in applying his expertise to reach the conclusions set forth in his report is not apparent.¹ In addition, the Prosecution gives notice that, should the Trial Chamber permit Fruits as an expert witness, it wishes to cross-examine him. On 23 July 2007, the Ojdanić Defence filed a Response to the Prosecution’s Notice re-asserting that Fruits has a wide-ranging and in-depth expertise in statistics and that his conclusions are substantiated with cogent discussions of the bases and reasonings behind his conclusions.²

2. The Prosecution also challenges the admission of Radomir Lukić’s three proposed expert reports, arguing that they do not supply adequate references to satisfy the Chamber that the underlying premises are indeed true and accurate.³ The Prosecution also expresses its wish to cross-examine the witness. On 18 July 2007, the Šainović Defence submitted its Response to the Prosecution’s Notice, stating that Lukić’s reports are exclusively the expert analysis and interpretation of the meaning and wording of constitutional texts and, as such, do not require the writer to indicate references.⁴

3. The Trial Chamber finds the Prosecution’s objections to both the witnesses to be unconvincing. Both the witnesses are qualified to give their opinions in the relevant fields of inquiry. Fruits’s report relates mainly to the application of statistical methods, which is within his area of expertise. Lukić’s report is a textual analysis and often refers to specific legal provisions, many of which are annexed to the report. Both reports meet the minimum levels of reliability and relevance.

¹ Prosecution Notices Pursuant to Rule 94 *bis* (B), 11 July 2007, paras. 18–19.

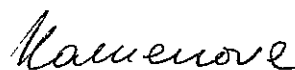
² Response to Prosecution Notice Pursuant to Rule 94 *bis* (B), 23 July 2007.

³ Prosecution Notices Pursuant to Rule 94 *bis* (B), 11 July 2007, para. 11.

4. Accordingly, the Trial Chamber, pursuant to Rules 89 and 94 *bis* of the Rules of Procedure and Evidence of the Tribunal, hereby **DECIDES** as follows:

- (a) Eric Fruits and Radomir Lukić shall be allowed to testify as expert witnesses under reference to their reports.
- (b) Eric Fruits and Radomir Lukić shall be required to appear for cross-examination.

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



Judge Tsvetana Kamenova

Dated this third day of August 2007
At The Hague
The Netherlands

[Seal of the Tribunal]

⁴ Defence Response "Prosecution Notices Pursuant to Rule 94 *bis* (B)", 18 July 2007, para. 4.