



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: 13 May 2008
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: 13 May 2008

PROSECUTOR

v.

**MILAN MILUTINOVIĆ
NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ**

PUBLIC

**DECISION ON JOINT DEFENCE SUBMISSION ON
EXPERT REPORT OF BRANIMIR JOKIĆ**

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 seised of the “Joint Defence Submission on the Expert Report of Professor Branimir Jokić,” filed on 25 April 2008 (“Joint Motion”), and hereby issues this decision thereon.

1. On 22 and 23 April 2008, the Trial Chamber heard the joint Defence expert on cultural heritage, Branimir Jokić, who gave evidence in relation to his report “Evaluation of the Report ‘The Destruction of Cultural Heritage in Kosovo 1998–1999; A Post-war survey’ by Andrew Herscher and András Riedlmayer” (“Report”). The Report, excluding its Annexes, was admitted as exhibit 1D743 on 22 April 2008. During the hearing on 23 April 2008, the Defence were asked by the Chamber to submit a filing, indicating which Annexes or parts thereof they seek to have admitted into evidence.¹

2. In the Joint Motion, the Defence request that Annexes 8,² 11,³ and 14⁴ of the Report be admitted into evidence. The Defence also seek admission of Annex 3,⁵ page 7 (paragraph 5.6.1) and page 8 (paragraph 5.6.2); Annex 5,⁶ eCourt pages 280–284, 341–342, 484–486, and 494–497; and Annex 6,⁷ pages 10–11 and 121–130.⁸ Further, the Defence inform the Chamber that they, in consultation with Branimir Jokić, have identified the sources used and referred to in the Report and have decided to delete references to certain sources in the Report. The altered Report with tracked changes is attached to the Joint Motion.⁹

3. The Prosecution responded that it does not object to the admission of Annexes 8, 11, and 14 of the Report.¹⁰ However, it objects to the admission of the specified items requested to be

¹ T. 25945–25948 (23 April 2008). The Defence were also asked to clarify references made in the Report to documents which are neither annexes nor existing exhibits in the case.

² List of the Protected Cultural Heritage – Registered Immovable Cultural Property, 1994.

³ List of Cultural and Religious Objects Included by the Report the Destruction of Cultural Heritage in Kosovo 1998–1999; A Post-war survey.

⁴ Correspondence with the Experts on Cultural Heritage Protection.

⁵ Report from the Swedish Foundation for Cultural Heritage Without Borders, 2000.

⁶ Final Report Project Protection of Natural and Cultural Heritage in Metohija, 2001–2002, Center for Protection of Natural and Cultural Heritage of Kosovo and Metohija (MNEMOSYNE).

⁷ UNESCO, Cultural Heritage in Kosovo Protection and Conservation of a Multi-Ethnic Heritage in Danger, 2003.

⁸ Joint Motion, para. 2.

⁹ Joint Motion, para. 4; *see* Annexes A and B to the Joint Motion.

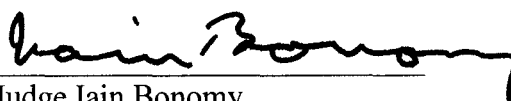
¹⁰ Prosecution Response to Joint Defence Submission on the Expert Report of Professor Branimir Jokić, 2 May 2008 (“Response”), para. 2.

admitted from Annexes 3, 5, and 6, absent a further showing of their relevance and probative value.¹¹

4. The Trial Chamber, having reviewed Annexes 8, 11, and 14 and the contested portions of Annexes 3, 5, and 6 of the Report, hereby ORDERS, pursuant to Rules 54 and 89 of the Rules of Procedure and Evidence of the Tribunal, as follows:

- a. The following portions of the Annexes of the Report shall be admitted into evidence:
 - i. Annex 3, page 7 (paragraph 5.6.1) and page 8 (paragraph 5.6.2);
 - ii. Annex 5, eCourt pages 280–284, 341–342, 484–486, and 494–497;
 - iii. Annex 6, pages 10–11, 121–130; and
 - iv. Annexes 8, 11, and 14.
- b. The current version of 1D743 and Annexes 1, 2, 4, 7, 9, 10, 12, 13, 15, and 16 shall be removed from eCourt by the Defence.
- c. The amended version of the Report, including the Annexes, as specified in (a) and (b) above, shall, within seven days of the date of this Decision, be uploaded to eCourt by the Defence as exhibit 1D743. Once the Defence has uploaded the new version of the exhibit, it shall be deemed admitted into evidence.

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


Judge Iain Bony
Presiding

Dated this thirteenth day of May 2008
At The Hague
The Netherlands

[Seal of the Tribunal]

¹¹ Response, paras. 4–11.