

IN THE TRIAL CHAMBER**Before:****Judge Richard May, Presiding
Judge Patrick Robinson
Judge O-Gon Kwon****Registrar:****Mr. Hans Holthuis****Decision of:****10 October 2002****PROSECUTOR
v.
SLOBODAN MILOSEVIC**

DECISION CONCERNING AN AMICUS CURIAE

The Office of the Prosecutor**Mr. Geoffrey Nice****The Accused****Slobodan Milosevic****Amici Curiae****Mr. Steven Kay
Mr. Branislav Tapuskovic
Mr. Michail Wladimiroff**

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 ("International Tribunal"),

HAVING today issued an oral order instructing the Registrar to revoke the appointment of Michail Wladimiroff as an amicus curiae,

PURSUANT to Rules 74 and 54 of the Rules of Procedure and Evidence

HEREBY CONFIRMS its ruling and attaches detailed reasons for its decision.

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

Richard May
Presiding

Dated this tenth day of October 2002
At The Hague
The Netherlands

[Seal of the Tribunal]

**REASONS OF THE TRIAL CHAMBER FOR REVOKING MR. WLADIMIROFF'S
APPOINTMENT AS AN AMICUS CURIAE**

The accused has complained about publications in two newspapers. The first was published on the 7th of September, 2002 in the Haagsche Courant, a Dutch newspaper in The Hague, and the second on the 13th September, 2002 in the Kultura, a Bulgarian newspaper in Sofia, Bulgaria. Both publications resulted from interviews given by Mr. Michail Wladimiroff, one of the three amici curiae in this case.

The publication in the Haagsche Courant was captioned: "Wladimiroff : Already Enough Evidence Against Milosevic". Mr. Wladimiroff is reported as saying, "If this trial were only about Kosovo and one had to draw up the balance now, Milosevic would certainly be convicted. A link has been established between the army and the police, the warring parties in Kosovo and Milosevic himself."

Mr. Wladimiroff explained that he had been misquoted, and that what he had said was that "we have seen during the Prosecution case at least on the face of it, there is a link between the offences in Kosovo and the accused. That may not be for all events, but even if it were half of it, it is a relevant factor for the Trial Chamber when reaching a verdict."

In the Kultura publication Mr. Wladimiroff was asked, "Is there a possibility of Milosevic being found innocent?" He is reported to have answered, "Theoretically, yes, but in practice, no. If you went hunting and shot at game with an automatic rifle. You would stand a greater chance of hitting it than he stands of being found innocent. Milosevic is accused of offences in a great many places in Kosovo, Bosnia and Croatia. Even if he were acquitted of half the accusations, he would be found guilty of the rest. This is why the possibility of Milosevic being found completely innocent is insignificantly small."

In his written comments Mr. Wladimiroff explained that what he had said was that in using a shotgun aimed at a large target the Prosecutor was attempting to ensure that some of the pellets hit the target. He pointed out that he had also said that there was a possibility of the accused being acquitted of all charges. He explained further that the student who had interviewed him had edited his answers, and included a phrase, "theoretically, yes, but in practice, no", not used by him and that the student had sent him a transcript and confirmed his (Mr. Wladimiroff's) account of the interview.

The transcript (which is annexed) is, of course, the best evidence of what was said. It is only necessary to refer to the following two parts:

As a matter of theory yes but as a matter of practicality you should realize this: if you hunt and chase a game you use a specific shotgun and that shotgun may have a hundred bullets these small things. The reason you why use that kind of ammunition is that always will hit, that is exactly the technique that the prosecution is using now [the indictment] for [say] 40 villages in Kosovo, for 40 villages in Bosnia, 40 communities in Croatia, so altogether somewhere up to 100 communities, lets say 50 will fall down and not hit him and the other 50 will, so the chance that nothing will stick is extremely small...

...that is what they have to prove. each of these links may fail, you may lose half of these communities, you may lose half of all the links, at the very top you may lose again a number of cases, but some will stick, as we have spoken of a chance that some will stick, statistically spoken, the chance that some will stick is there, that's reality, theoretically, it may all fail, theoretically yes he may be acquitted.

Both publications had other statements attributed to Mr. Wladimiroff. But the Chamber does not consider it necessary to examine them.

The Chamber has considered this matter very carefully, and has concluded that the statements made by Mr. Wladimiroff, even with the explanations accepted, raise serious questions about the appropriateness of his continuing as amicus curiae. The Chamber observes that not only did he comment on parts of the case in respect of which evidence has been given, but that he also made an assessment of parts in respect of which evidence had not yet been adduced, and that in both instances he appears to have formed a view of the case unfavourable to the accused. Of particular concern is the view expressed that the accused must be convicted of, at least, some of the charges. The statements taken as a whole, would, in the Chamber's view, give rise to a reasonable perception of bias on the part of the amicus curiae.

Implicit in the concept of an amicus curiae is the trust that the court reposes in "the friend" to act fairly in the performance of his duties. In the circumstances, the Chamber cannot be confident that the amicus curiae will discharge his duties (which include bringing to its attention any defences open to the accused) with the required impartiality.

Accordingly the Chamber has instructed the Registrar to revoke Mr. Wladimiroff's appointment as an amicus curiae. This is a decision that the Chamber has arrived at with much regret, since Mr. Wladimiroff has, like the other amici, provided useful assistance to the court.