



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: IT-98-29-T  
Date: 18 April 2002  
Original: English

**IN THE TRIAL CHAMBER**

**Before:** Judge Alphons Orie, Presiding  
Judge Amin El Mahdi  
Judge Rafael Nieto-Navia

**Registrar:** Mr Hans Holthuis

**Decision of:** 18 April 2002

**PROSECUTOR**

v.

**STANISLAV GALIĆ**

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**DECISION ON THE PROSECUTOR'S SECOND MOTION FOR THE ADMISSION INTO  
EVIDENCE OF WRITTEN STATEMENT BY DECEASED WITNESS BAJRAM ŠOPI,  
PURSUANT TO RULE 92BIS(C)**

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**Office of the Prosecutor:**

**Mr. Mark Ierace**

**Counsel for the Defence:**

**Ms. Mara Pilipović  
Mr. Stéphane Piletta-Zanin**

**TRIAL CHAMBER I, Section B** (“the 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 Tribunal”);

**BEING SEISED OF** the “Prosecutor’s Motion for the Admission into Evidence of Written Statement by a Deceased Witness Pursuant to Rule 92 *bis* (C) and Request for this Witness to be Added to Prosecution’s Witness List” filed on 27 March 2002 and to which are attached the death certificate of Bajram Šopi (Annex II) and his statement (Annex I) (“the Motion”);

**NOTING** the “Reply to the Request of the Prosecutor to Present the Evidence in Accordance to Rule 92 *bis* (C)” filed by the Defence on 8 April 2002 (“the Reply”);

**NOTING** the “Prosecution’s Response to the Reply of Defence Counsel to the Prosecution’s Proposal to Admit evidence of a Written Statement of a Deceased Witness Pursuant to Rule 92 *bis* (C) and Request for the Witness to be Added to the Prosecution’s Witness List”, dated 15 April 2002 and the oral decision of the Trial Chamber granting leave to respond to the Prosecution dated 18 April 2002;

**NOTING** that the Prosecution seeks admission into evidence of two paragraphs of a statement made by Bajram Šopi to the Office of the Prosecutor to the extent that it relates to scheduled sniping incident 11 (“the Statement”);<sup>1</sup>

**NOTING** that the Prosecution seeks, as a corollary, to reinstate its list of witnesses filed pursuant to Rule 65 *ter* on 29 October 2001 (“the Prosecution List of Witnesses”) on the basis of Rule 73 *bis* (D), to add the witness Bajram Šopi on the ground that the admission of the Statement would be in the interest of justice as it adds to the *viva voce* evidence already heard and discerned at trial with respect to scheduled sniping incident 11, that it would not cause any unreasonable delay in the proceedings or significantly extend the length of the trial and that it would not cause any undue hardship to the Defence as the Statement was disclosed to the Defence more than two years ago on 6 January 2000;

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<sup>1</sup> Motion, para 5: the Prosecution submits that because the Statement as a whole contains additional evidence pertaining to unscheduled and undated incidents, it does not seek its admission.

**NOTING** that the Prosecution claims that the evidence sought to be adduced is relevant, has probative value and does not relate to the acts and conduct of the accused;

**NOTING** that the Defence objects to the admission of the Statement on the following grounds: (i) the information provided on scheduled sniping incident 11 is inconsistent and imprecise, (ii) no date is specified in respect of the other incidents referred to in the Statement and it is therefore impossible to determine whether they occurred at a time relevant to the indictment, (iii) cross-examination is unaffordable in this instance so that the right to a fair trial is jeopardised, (iv) there is no need to present such evidence;

**CONSIDERING** that Rule 73 *bis* (D) provides that “[a]fter commencement of the trial, the Prosecution may, if he or she considers it to be in the interests of justice, file a motion to reinstate the list of witnesses or to vary the decision as to which witnesses are to be called”; that the spirit of Rule 73 *bis* (D) is to prevent the Prosecution from calling witnesses without sufficient notice to the Defence; that in the present case, the variation of the Prosecution List of Witnesses sought by the Prosecution concerns the statement of a deceased witness; that, although that witness was not listed on the Prosecution List of Witnesses, the Defence confronted a Prosecution witness with parts of the Statement of that deceased witness at trial; that the Defence has not expressed an opinion on the application of Rule 73 *bis* (D) in its Reply;

**CONSIDERING** that the Trial Chamber finds that Rule 92 *bis* (C) must be read in conjunction with Rule 89 (C), which authorises a Chamber to admit any relevant evidence which it deems to have probative value and that under these circumstances there is no need to add the name of the above-mentioned deceased witness on the Prosecution List of Witnesses;

**CONSIDERING** that, to the extent that it relates to scheduled sniping incident 11, the Statement is relevant as it was made by an eyewitness of an incident specifically pleaded in the indictment;

**CONSIDERING** that the Statement provides evidence corroborative to the live testimony of witnesses Nura Bajraktarević, that part of the Statement was contested by the Defence through its cross-examination of Nura Bajraktarević with regard to particular inconsistencies contained in the Statement, and that the Prosecution has indicated that it will call Josip Buntić to testify on the same incident;

**CONSIDERING** that the Defence has had, or will have, the opportunity to challenge the information contained in the Statement by cross-examining the aforementioned witnesses;

**CONSIDERING** that the right to have statements of deceased witnesses admitted is guaranteed under Rule 92 *bis* (C) so long as the *indicia* of reliability of these statements are satisfactory;<sup>2</sup>

**CONSIDERING** that the Statement was taken with the assistance of interpreters duly qualified and approved by the Registry of the Tribunal; that the Statement, although not taken under oath, was signed by the witness with an accompanying acknowledgement, also signed by the witness, that the content of the Statement is true to the best of his recollection; that the witness Nura Bajraktarević confirmed that Bajram Šopi was at the scene of the incident; that the Statement presents no manifest inconsistency;

**CONSIDERING** that the Trial Chamber finds that there are satisfactory *indicia* of its reliability, within the meaning of Rule 92(C)(ii), and that the fact that the right to cross-examination cannot be executed goes appropriately to the weight of evidence;

**CONSIDERING** that under Rule 92 *bis* (A) a statement may not be admitted if it goes to proof relating to “the acts and conduct of the accused as charged in the indictment”; and that, in the Trial Chamber’s view, this requirement equally applies to Rule 92 *bis* (C);

**CONSIDERING** that the Trial Chamber finds that the phrase “acts and conduct of the accused” only covers the deeds and behaviour of the accused himself and does not encompass the acts and conduct of his co-perpetrators and/or subordinates,<sup>3</sup> and that the Statement does not mention the accused, his superiors or subordinates, nor gives any information on the origin of the shot;

**CONSIDERING** furthermore that admission of the relevant paragraphs of the Statement would not impact on the length of the trial nor cause undue hardship to the defence;

**CONSIDERING** that the Trial Chamber finds that the Statement, referred to by *viva voce* testimony, has probative value within the meaning of Rule 89(C) and that it is in the interest of justice to admit it into evidence;

<sup>2</sup> See in particular *Prosecutor v Dario Kordić and Mario Čerkez*, Decision on Appeal Regarding Statement of a Deceased Witness, Case No. IT-95-14/2-AR73.5, 21 July 2000, paras 22 and 23.

<sup>3</sup> See *The Prosecutor v. Slobodan Milošević*, “Decision on Prosecution’s Request to have Written Statements Admitted Under Rule 92 *bis*” Case No. IT-02-54-T, 21 March 2002, para. 22.

**PURSUANT** to Rules 89 (C) and 92 *bis* (C);

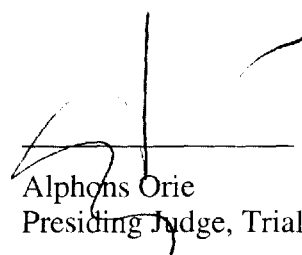
**FOR THE FOREGOING REASONS,**

**PARTIALLY GRANTS** the Motion,

**ORDERS** that the two paragraphs of the Statement related to scheduled incident 11 be admitted into evidence, and

**DIRECTS** the Registry to give an exhibit number to the Statement.

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



Alphons Orie  
Presiding Judge, Trial Chamber 1

Dated this 18<sup>th</sup> day of April 2002  
At The Hague,  
The Netherlands.

**[Seal of the Tribunal]**